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S. HRG. 99-487

# FARMERS HOME ADMINISTRATION'S NEW LOAN SERVICING REGULATIONS

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## HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

SPECIAL HEARING

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE
57-710 O WASHINGTON : 1986

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# FARMERS HOME ADMINISTRATION'S NEW LOAN SERVICING REGULATIONS

FRIDAY, JANUARY 24, 1986

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT,
AND RELATED AGENCIES,
COMMITTEE ON APPROPRIATIONS,
*Washington, DC.*

The subcommittee met at 9:30 a.m. in room SD–138, Dirksen Senate Office Building, Hon. Thad Cochran (chairman) presiding.

Present: Senators Cochran, Andrews, Abdnor, Kasten, Mattingly, Specter, Stennis, Burdick, Bumpers, and Harkin.

Also present: Senators Boren and Heflin.

## CONGRESSIONAL WITNESSES

### OPENING REMARKS OF SENATOR COCHRAN

Senator COCHRAN. The subcommittee will please come to order.

This morning's hearing is to hear specific answers to questions about the Farmers Home Administration's regulations on foreclosure policy.

We have with us this morning to testify, Under Secretary of Agriculture Frank Naylor and FmHA Administrator Vance Clark.

We appreciate your responding to our request to come before the subcommittee and talk about this subject.

We are interested in learning the impact of this new policy on possible funding performance of this Agency. It may be that the budget request that is going to be submitted by the President on February 4, which we have not had an opportunity to review, will need to be carefully examined to see whether or not it will call for enough funding to pay for employees and manpower to handle the extra workload that may be generated by the new policy of the administration, and that is something that we want to explore this morning.

For some background, when I was back in my State over the Thanksgiving holiday, a friend of mine handed me a copy of some instructions that had been received, locally, by a Farmers Home County Supervisor. These instructions related to letters that would be sent out—according to these instructions—after the first of the year to all Farmers Home borrowers who were at least $100 behind on their payments to the Farmers Home Administration, on either interest or principal, or to a farmer who converted secured property for some use prohibited under the terms of loans from the Farmers Home Administration, or who otherwise violated security arrangements with Farmers Home. These letters would put borrowers on notice that they could expect adverse action to be taken after the first of the year.

As a matter of fact, when you read down in the fine print, you found that there was the suggestion that, without any question, there were very few exceptions, the debt owed to the Farmers Home would be accelerated and foreclosure would take place.

In my State there are over 6,000 farmers who fall within that definition, who are at least $100 behind on their payments, and, after further review, we found that a like number would receive such letters in Louisiana and many other States. I could just see the panic that that would engender as a result of that notice being received, and so I wrote a letter to the Administrator when I got back to Washington asking whether this was a change in policy or what was the policy.

I had understood the policy to be one of leniency, one of trying to work with farmers to get them back on their feet, if that were possible, and to try and keep them in business, if that were possible. I was wondering whether or not this was a change in policy. I didn't have any response until I picked up a New York Times on January the first, Happy New Year, and the headline was "Agriculture Department to Order Farmers to Pay Late Debt—Foreclosures Possible."

There was a good article, describing these instructions, in an interview with the Administrator of the Agency. Then the next day, in the Washington Post and the Wall Street Journal, there were similar articles. And then, in my State, on January 16, there was an article in our leading newspaper with the same subject.

At this point in the record, we will include copies of those newspaper accounts of the new policies of the Farmers Administration.

[The information follows:]

[From the New York Times, Jan. 1, 1986]

## AGRICULTURE DEPARTMENT TO ORDER FARMERS TO PAY LATE DEBT—FORECLOSURES POSSIBLE

(By Keith Schneider, Special to the New York Times)

WASHINGTON, Dec. 31—The Farmers Home Administration today began preparing to notify thousands of farmers, who owe the Government nearly $6 billion, that they must bring their loan payments up to date or face foreclosure.

In effect, the action ends a 25-month moratorium on farm foreclosures by the agency, which is a division of the Agriculture Department.

The action comes at a time when growers face the worst farm economy in half a century, with little prospect of improvement in the near future, according to agricultural experts.

### MANY FORECLOSURES PREDICTED

The 1985 farm bill, signed last week by President Reagan, will lower the price the Government pays to farmers for their crops. Critics of the new law contend it will cause farmers' income, which has been dropping sharply since 1981, to continue to decline.

Moreover, an accompanying bill to bolster the farm credit system, a major source of farm loans, would establish a new unit to absorb billions of dollars in delinquent loans and foreclose on tens of thousands of farms, according to farm economists.

"We are going to see a massive new wave of foreclosures and farm liquidations in 1986," said Mark Ritchie, the farm policy analyst for the Minnesota Department of Agriculture. "The Farmers Home Administration, and other lenders, including the farm credit system, are faced with an impossible situation.

### DECISION ON WHICH SURVIVE

"They have to make a decision next year about which farmers they want to keep in business and which ones they can't help. We lost 5,000 farms here in 1985. We expect to lose double that number next year. Our studies show it's the same situation and worse in every other farm state."

Mr. Ritchie said the implications for rural economies were ominous. "For every 10 farmers that go out of business, we lose a business in a small town," he said. "For every farm that goes out, we lose three jobs. It's just a mess."

But the agency's Administrator, Vance C. Clark, said the Government did not intend to begin a wave of foreclosures. 'Our intent is not to add to the hysteria out there," Mr. Clark said. "We are not the enemy."

According to Federal officials, roughly a third of the 275,000 farmers who have borrowed money from the agency are behind in their payments. The agency said it could not estimate how many farmers would be forced to give up their farms under the new program.

The Farmers Home Administration is often the lender of last resort to farmers who cannot otherwise find loans. Economists say these growers are generally in the most precarious financial position of any farmers.

In two to three weeks any borrower who is behind by more than $100 will receive a letter from the agency advising him that unless he takes steps to pay the Government back the agency could initiate foreclosure proceedings.

Agency officials insisted that the notices were not intended to alarm farmers.

"The letter we are sending will clearly state that a farmer will have many opportunities to work with us in becoming current on his loans," said Mr. Clark. "We are going to do everything possible to keep a farmer on his land. The last thing we want to do is start foreclosures."

But farmers around the nation said they feared the Government was beginning a new program to drive family farmers out of business.

"We are worried that these letters will frighten farmers and confuse them," said Susan Bright, a farm organizer who lives in Centerville, Ind. "Instead of helping them, it could make them lose their farms. We are telling farmers who get these letters not to panic. Be sure to answer them. And then see their lawyers."

Farmers in North Dakota have already asked a Federal judge to prevent any foreclosures that may result from the letters.

The agency had initiated few foreclosures in the last 25 months because of a series of lawsuits brought by farmers in seven states in the early 1980's. The lawsuits contended that the Farmers Home Administration violated a 1978 statute requiring the agency to forgo foreclosures and to defer loan payments if farmers were unable to meet their obligations because of circumstances beyond their control.

In one key case, Federal District Judge Bruce Van Sickle in North Dakota ruled that the agency could not proceed with any new foreclosures without advising farmers of their right to apply for a loan payment deferral and to appeal Government foreclosure decisions.

The ruling, in November 1983, caused the agency to stop sending foreclosure notices to farmers in all but a few cases and forced it to draw up new regulations for foreclosure proceedings. The new guidelines, published last November in the Federal Register, provide farmers with a number of options for paying the Government back.

These include allowing farmers to defer some of their payments, providing low-interest loans to help farmers improve their cash flow, combining loans at new rates and terms and rescheduling loans.

If none of these options are practical, officials said, the agency would begin to foreclose on farms.

The Farmers Home Administration has lent farmers $26 billion, or 12 percent of the nation's $214 billion farm debt. Before the moratorium the agency routinely sent notices to farmers behind in their payments and foreclosed on hundreds of farms each year. The agency currently holds the deeds to 3,812 farms and has 937,000 acres, which it either manages or leases out.

In recent months, however, plummeting farm prices, coupled with rising production costs, have dramatically weakened the financial position of tens of thousands of farmers. In September the agency said roughly 80,000 farmers who had borrowed from the Farmers Home Administration had fallen behind in their payments. Many owe the agency in excess of $200,000.

Each of these farmers will receive a letter that states, "We regret to inform you that a review of your Farmers Home Administration loan account indicates the need to take adverse action." The notice requires farmers to respond within 30 days. A reply form will be included with the mailing that enables the farmer to choose one or more debt-servicing options or to file for an appeal.

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[From the Washington Post, Jan. 2, 1986]

## U.S. to Send Farmers Foreclosure Warnings—Two-Year Moratorium Ends

(By Keith B. Richburg, Washington Post Staff Writer)

The Farmers Home Administration, ending a court-ordered two-year moratorium, will begin notifying farmers next week that if they are delinquent on federal loans they must immediately take steps to repay or restructure those loans or face foreclosure of their farms.

Letters, titled "notice of intent to take adverse action," will be mailed out to any farmers who are at least $100 behind in loan payments at the end of December. About 90,000 farmers, a third of all those who took out FHA loans, are estimated to be behind in their payments.

The FHA, a division of the Agriculture Department, has oftentimes been the lender of last resort to America's cash-strapped farmers, and now holds about 12 percent of the nation's total farm debt.

The letters will tell the farmers that they are delinquent in their payments, and spell out seven steps the farmers can seek to take, including having the loan restructured, deferring some payments, combining loans and applying for new short-term, low-interest loans to help with quick cash-flow problems. The farmers will have 30 days to respond to the notices.

Vance L. Clark, the FHA administrator, said yesterday that the notices should not be interpreted as a decision to begin foreclosing on farms. Rather, he said, the letters will tell farmers that they are behind in their payments and will outline the available options.

"Foreclosure, that's the last thing that happens," Clark said. "There are a lot of options open to borrowers to preclude these foreclosures." He said that along with each notification he is sending a letter from himself telling each farmer that the FHA understands the farmers' plight and wants to help.

Still, Clark said, there eventually may have to be some farm foreclosures, bearing out the worst predictions of farmers and farm-state lobbyists. "Not everybody's going to make it this year. There's going to be some who have to leave the farm," Clark said.

The Farmers Home Administration was essentially barred from sending out notifications of foreclosures to farmers in November 1983, when a federal judge in North Dakota said the lending agency must first notify farmers of all other options open to them before moving forward with foreclosure proceedings.

That ruling, in a class-action case brought by farmers whose land was threatened, forced the FHA to hold up new foreclosure notices while it drafted regulations giving farmers various options for handling their debts.

Those regulations were published in the Federal Register in November.

"The judge said 'wait a minute, you have to tell them [the farmers] of other avenues,' so we cleaned up our act." Clark said. Before the judge's moratorium, which effectively ended yesterday, the FHA had foreclosed on hundreds of farms.

Rising production costs, a grain glut and falling farm prices—expected to go even lower because of new legislation signed by President Reagan to drive commodity prices down—all have taken a toll on thousands of American farmers, forcing many into massive debts and driving some out of business.

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[From the Wall Street Journal, Jan. 2, 1986]

## U.S. TELLS FARMERS TO MAKE PAYMENTS OR REARRANGE TERMS OF LOANS IN ARREARS

(By David Shribman, Staff Reporter of the Wall Street Journal)

WASHINGTON—The Farmers Home Administration, signaling the end of a two-year moratorium on foreclosures, is telling farmers to make payments on their federal loans or arrange new terms within a month's time.

The agency, which is an arm of the Agriculture Department, is notifying about 90,000 farmers that they must bring their loans up to date or agree to new loan conditions if they wish to avoid foreclosures. The agency said it couldn't estimate how many foreclosures would result but maintained that the action wouldn't bring major dislocations in rural communities.

"We are not massively foreclosing," said Kathleen Lawrence, deputy undersecretary of agriculture for small-community and rural development. "The policy of the department is still to show forebearance to farmers who have any chance whatsoever to recover."

Though more than a third of the 270,000 farmers who have borrowed money from the agency are in arrears, the Agriculture Department hasn't initiated any foreclosure proceedings for about two years. The department had been prevented from beginning such action by a court order stipulating that the government publish new regulations specifying the rights of borrowers.

Those new regulations were approved by the court and published in October, freeing the government to take action to collect the loan payments or foreclose on farms, which have been suffering from a level of economic distress unsurpassed since the Depression.

"You can assume the effect would be tough on farmers," said Republican Rep. Gene Taylor, whose Missouri district includes many cattle and dairy farms.

Agriculture Department officials emphasized that the Farmers Home Administration would seek to avoid foreclosures on the $8.5 billion in farm and rural housing loans it has made, adding that in some cases foreclosure proceedings can take as long as two years.

The department's action was first reported by the New York Times.

The notices, which are to be sent by certified mail, outline the steps delinquent farmers must take to avoid foreclosures. The options available include renegotiating farm loans on the basis of lower interest rates, agreeing to new deferred payment plans and settling on different collateral arrangements. "We're telling the borrowers that there are things they can do to avoid foreclosure," said Ms. Lawrence.

Even so, lawmakers from farm districts warned that the action would initiate a new series of rural protests.

"You're going to see a replay of what we saw a year ago, when people started making the case that the farm economy just isn't strong enough to sustain itself," said Democratic Rep. Richard Durbin, whose Illinois district includes corn and soybean farmers. "The Reagan administration believes it is just a matter of will out here for farmers to recover. It's much more than that."

[From the Clarion-Ledger/Jackson Daily News, Jan. 18, 1986]

## FmHA TO PRESSURE DELINQUENT FARMERS

(By Wanda Cantrell, Clarion-Ledger Business Writer)

Mississippi farmers who have seriously delinquent loans with the Farmers Home Administration will begin receiving notices late next week that they must settle with the federal lending agency.

Farmers will be required to notify FmHA of the location of collateral for their loans and to meet with federal officials to work out a repayment plan, the agency, considered the "lender of last resort," said Friday.

Some 40 percent of Mississippi's $1.4 billion FmHA loan portfolio is delinquent, said the agency's acting director Dan Mattox. There are about 13,000 Farmers Home borrowers in the state.

Mattox stressed that the new demands do not immediately herald foreclosure for the delinquent farmers, who have been protected from foreclosure for more than two years with a pending federal lawsuit in Oxford. "We want to do everything we can to help the farmer and not foreclose," he said.

Mattox said he has not heard from lawyers handling the case for FmHA, and that he has no intention of moving forward with foreclosures at this time.

After several years of not pressing delinquent borrowers, the federal lender is beginning to crack down, particularly on those suspected of fraud in abusing FmHA loan collateral and those who have paid no money—interest or principal—on the loans for three years.

But despite the lack of foreclosure, the new move could have a serious effect on whether some continue to farm. "Our borrowers are going to have to show that they can pay the debt they owe—and how—before they will be eligible for planting loans this year," Mattox said.

"They will have to cash flow these accounts now."

Farmers across the nation are facing FmHA's tightening of money as a result of the recent lifting of a court-ordered foreclosure moratorium in 44 states. Mississippi is one of six states not affected by the North Dakota class action case.

U.S. Department of Agriculture Undersecretary Frank Naylor said Friday that there are 65,351 delinquent borrowers who have a total of 225,073 loans as of Jan. 10, representing about 25 percent of all FmHA borrowers.

The highest delinquency rates continue to be in the Southeast, where farmers are more dependent on federal credit. Mississippi has one of the highest delinquency rates in the nation.

About 40 percent of Louisiana FmHA borrowers are delinquent, and 21 percent of Alabama borrowers are delinquent.

### NEW PROCEDURES

Senator COCHRAN. Then this Wednesday, I did get a response to my letter, after reading these accounts of the policy in the newspaper, which I appreciate very much.

What alarms me more than the tardy response to my inquiry was whether or not we are going to see farmers subjected to foreclosure who are just $100 behind on their payments to the Farmers Home Administration, and whether they are going to be getting these notices of adverse action. At this point, I am going to put in the record these forms and the attachments to the Farmers Home instructions that were sent out to the Farmers Home offices.

[The information follows:]

## FMHA FORM 1924-25

Form FmHA 1924-25
(9-85)

*Position 3*

United States Department of Agriculture
Farmers Home Administration

____________________________
*(Date)*

### NOTICE OF INTENT TO TAKE ADVERSE ACTION

Dear:

We regret to inform you that a review of your Farmers Home Administration (FmHA) loan account indicates the need to take adverse action.

We have attempted to work out a satisfactory solution to your credit problems through the various servicing options available, but have not been able to do so. For your information and review we have included with this material a copy of the FmHA notice entitled "Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities" (Form FmHA 1924-14).

This "NOTICE OF INTENT TO TAKE ADVERSE ACTION" requires a response from you within 30 days, using the attached form entitled "Borrower Acknowledgement of Notice of Intent to Take Adverse Action" (Form FmHA 1924-26). That form offers you the opportunity to request for consideration a number of servicing options. Further details are provided below.

We have conducted a review of your Farmers Home Administration (FmHA) loan accounts and determined the following where checked:

- ☐ You are presently $ ________________ behind schedule on your FmHA loan installments which is a violation of your note and mortgage and/or security agreement.
- ☐ You have made unapproved dispositions of property that is covered by security instruments which secure your FmHA indebtedness. The property in question is ________________________ *(Describe property)*
- ☐ You have stopped farming or ranching which is a violation of your loan agreements.
- ☐ You have ________________________________ *(insert the reason(s) for the proposed adverse action)*

If the above listed violation(s) is not corrected by one or more of the actions described in the attached Form FmHA 1924-26, "Borrower's Acknowledgment of Intent to Take Adverse Action," FmHA intends to accelerate your FmHA debts and foreclose on your real estate and/or chattels. This may include repossessing your chattels or in other ways proceeding against property you own in which FmHA has a security interest or terminating the release of sales proceeds.

You may, with regard to your Operating, Economic Emergency, Emergency, Farm Ownership, Soil and Water, Special Livestock, Economic Opportunity, Rural Housing for farm service buildings, and/or Recreation loan(s), apply for servicing options, including deferrals, that are explained in the enclosed Form FmHA 1924-14, "Notice-Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities." Please read this form carefully.

If you wish to apply for any of the servicing options you must complete Part I of the enclosed Form FmHA 1924-26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," sign the form, and return the form to the address listed on the letterhead of this notice within 30 days after you receive this notice. We will then arrange a conference with you to develop financial statements and farm operating plans which FmHA will use to make a determination on your request for servicing options. If you fail to attend this conference without offering a legitimate excuse or if you fail to provide necessary information, your request will be automatically denied and you will not be given an opportunity to appeal any adverse decision.

At the conference you will be given the opportunity to present information you believe will show you are eligible for the servicing option(s) you requested. FmHA will make a decision on your request based on the information submitted by you, the information in your FmHA case file and the plans developed by you and FmHA at the conference. Such a decision will be in writing and, if the decision is adverse, FmHA will explain how to appeal the decision and to have an appeal hearing. Such a hearing will cover both the denial of your request for servicing alternatives and other adverse actions FmHA intends to take against you as indicated above.

If you do not wish to request servicing options, you have the opportunity to appeal the adverse action(s) FmHA intends to take. In this case, you should complete only Part II of Form FmHA 1924-26, sign the form and return it to the address shown in the letterhead of this notice within 30 days after you receive this notice. You may appear in person, with or without an attorney or other representative, to present your information. The hearing officer will be an FmHA employee who has not been previously involved in your case. The hearing officer will arrange a mutually convenient time and place for the appeal hearing.

Several methods of curing defaults or liquidating your FmHA loan accounts are available. If you prefer to use one of these

**methods listed in Part III (Curing Defaults) or Part IV (Liquidation Action) of Form FmHA 1924-26, check the appropriate box, sign the form and return it to the address listed in the letterhead of this notice within 30 days of receipt of this notice.**

Please note that Form FmHA 1924-26 must be postmarked within 30 days of the day you received this notice. If you fail to respond to this notice by completing, signing and returning Form FmHA 1924-26 in the prescribed time, FmHA will proceed to take the adverse action(s) against you without further notice and right of administrative appeal by you.

*(The following paragraph applies for individual borrowers only)*

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age *(provided that the applicant has the capacity to enter into a binding contract)*; because all or part of the applicant's income is derived from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

____________________________
FmHA County Supervisor

---

## FmHA Form 1924-26

**Form FmHA 1924-26**
**(9-85)**

*Position 4*

FORM APPROVED
OMB NO 0575-0111
EXP DATE AVAIL ON REQUEST

United States Department of Agriculture
Farmers Home Administration

### Borrower Acknowledgement of Notice of Intent to Take Adverse Action

________________________
*(Date)*

County Supervisor, FmHA

This acknowledges that I(we) received your Notice of Intent To Take Adverse Action dated ____________________

**(Complete Part I, II, III, or Part IV and Part V)**

I. Servicing Actions

I(we) request FmHA to consider the following servicing actions (check one or more)

A. _____ Rescheduling
B. _____ Reamortization
C. _____ Consolidation
D. _____ Deferral
E. _____ Limited Resource
F. _____ Subordination
G. _____ Restructuring the business and debt by selling a portion of my (our) assets

I(we) understand that if, after I(we) attend a mandatory conference and present necessary information, FmHA denies my (our) request, I (we) will be given opportunity to appeal.

**(If you completed this part, proceed to Part V)**

**II. Appeal**

**I (we) do not wish to apply for the servicing options in Part I above. I (we) understand that I (we) may appeal FmHA's intended adverse action and I (we) wish to have the appeal hearing handled as follows:**

**(check appropriate box)**

**A. _____ I(we) request an appeal hearing and I(we) believe FmHA's intended action is wrong for the following reason(s)**

**I(we) am(are) enclosing the following information for the hearing officer's consideration (Itemize specific documents)**

B. ______ I(we) request an appeal hearing and I(we) will present information at the hearing which I(we) believe will prove FmHA's decision is incorrect.

C. ______ I(we) will not attend an appeal hearing but request the hearing officer to review the existing written record, and based on the review, determine whether FmHA's decision is correct.

D. ______ I(we) do not want to appeal the intended action and waive my(our) right to do so.

(If you completed this part, proceed to Part V)

III. Curing Defaults (*Complete this only if you have checked none of the boxes in I or II above*)

I(we) do not wish to request a servicing option in Part I or to appeal the intended adverse action as allowed in Part II. I(we) wish to take the following action to correct the security agreement violations noted in Form FmHA 1924-25 and request a conference with you to discuss this action.

A. ______ Pay my(our) delinquent loan accounts current.

B. ______ Make restitution to FmHA for unauthorized disposition of security.

I will take this action within 60 days of the date this Form FmHA 1924-26 is postmarked. If I cannot accomplish this action within the 60 days, FmHA will proceed to take adverse action against me, and I will not be allowed to appeal the adverse action.

(If you completed this part, proceed to Part V)

IV. Liquidation Actions (*Complete this only if you have checked none of the boxes in I, II, or III above*)

I(we) do not wish to request a servicing option in Part I, appeal the adverse action as permitted in Part II, or correct the security agreement violations as permitted in Part III. I(we) wish to take the following action to liquidate my (our) FmHA accounts and request a conference with you to discuss this action.

A. ______ Sell my (our) security for cash.

B. ______ Convey my (our) security to FmHA.

C. ______ Transfer my (our) security to someone who will assume the FmHA debt.

D. ______ Refinance my (our) debt with another lender.

I will take this action within 120 days of the date this Form FmHA 1924-26 is postmarked. I understand that I may be considered for FmHA debt settlement should sale, transfer, or conveyance of secured property fail to satisfy my(our) entire FmHA debt. I understand that if I cannot accomplish this action within 120 days, FmHA will proceed to take adverse action and I will not be allowed to appeal that action.

(Proceed to Part V)

V. Certification

I(we) hereby request one of the above actions. I(we) understand that if I(we) do not request any of the actions in Parts I, III, or IV or desire an appeal hearing in Part II, FmHA may proceed to take immediate action on my(our) loan accounts.

Sincerely,

______________________________
(*Signature of borrower*)

______________________________
(*Signature of borrower*)

[illegible] GOVERNMENT PRINTING OFFICE [illegible]

FmHA 1924-26 (9/85)
(REVERSE)

## FmHA Form 1924–14

FmHA 1924-14
(Rev. 9/85)

*Position 3*

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

### NOTICE

### FARMER PROGRAM BORROWER SERVICING OPTIONS INCLUDING DEFERRALS AND BORROWER RESPONSIBILITIES

**Servicing Options**

All borrowers are expected to repay their loans according to planned repayment schedules. However, sometimes borrowers will not be able to pay as scheduled. If this happens, you may inquire about the following servicing options:

I. Deferral:

An approved delay in making regularly scheduled payments. Such a delay may be granted if FmHA finds that, due to circumstances beyond your control, you are temporarily unable to continue making the scheduled payments on such loan(s) without unduly impairing your standard of living. A more detailed description is available at any FmHA Office.

II. Limited Resource Program

The Farmers Home Administration (FmHA) has authority to make limited resource farm ownership and operating loans to qualified applicants.

The program provides credit at an interest rate which is lower than FmHA's regular interest rate.

In addition to making loans at reduced interest rate, borrowers with existing farm ownership and operating loans who qualify as limited resource operators may have their loans rewritten at the lower interest rate.

III. Consolidation:

Combining and rewriting similar type loans made for operating purposes at new rates and terms.

IV. Rescheduling:

Rewriting loans made for operating purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

V. Reamortization:

Rewriting loans made for real estate purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

VI. Subordination of the FmHA lien to the lien of another creditor.

VII. Restructuring the business and debt by selling a portion of your assets.

If you would like additional information regarding any of the above items and how to apply you should contact the FmHA County Supervisor. You will be asked to attend a conference with the FmHA County Supervisor and you must furnish the information necessary for FmHA to make a decision on your request. The County Supervisor can advise you of the information needed for a decision.

### FARMER PROGRAM BORROWER RESPONSIBILITIES

Please read carefully the following summary of major FmHA requirements. Farmer Program insured borrowers should understand what the Farmers Home Administration (FmHA) expects of them and how FmHA can be of better service. This is not a complete list of all responsibilities of an FmHA borrower; this highlights only *some* of those responsibilities.

**RESPONSIBILITIES CONSIST OF, BUT ARE NOT LIMITED TO, THE FOLLOWING:**

| | |
|---|---|
| PAYMENTS: | Payments are due as agreed upon in the note(s). It is essential that payments be made on time. Extra payments are encouraged whenever possible. |
| SECURITY: | The loan(s) is secured by a Financing Statement and Security Agreement and/or a real estate mortgage or other security instruments (depending upon the type of loan or security). These instruments give FmHA a valid lien on crops, chattels, land, etc., as applicable. |

| | |
|---|---|
| USE OF LOAN FUNDS. | FmHA loan funds will be used for the purpose(s) shown on the Farm and Home Plan or other plan of operation acceptable to FmHA, and/or Development Plan in cases of real estate improvements. |
| RELEASES AND SALES. | The Form FmHA 1962-1, "Agreement For The Use of Proceeds/Release of Chattel Security," which you signed is the agreement between FmHA and you which explains what sales you plan to make, approximately when and to whom those sales will be made, and how the proceeds from those sales will be used. You must inform FmHA if you want to make any sales which are not listed on the form, if you want to sell to a purchaser not listed on the form, or if you make a sale and you receive an amount of proceeds different from the amount listed on the form. It may be a violation of Federal criminal law to make sales which have not been authorized on Form FmHA 1962-1 or to fail to account for sales proceeds. |
| CHANGES IN OPERATION. | FmHA agreed to lend you money based on facts which you supplied about your operation. If any changes occur in your operation you should notify the FmHA County Supervisor at once. |
| VIOLATION OF RESPONSIBILITIES. | Violation of any of the above responsibilities may result in denial of further FmHA assistance, and could cause your FmHA loan(s) to be accelerated. |

## LETTERS OF INTENT

Senator COCHRAN. Now, I understand that there has been a change in the intentions. These letters have not gone out, as previously planned. We have seen instead a decision made to refrain from sending such letters to all delinquent borrowers, and that is another thing that we want to clear up this morning: What are we going to expect, what can farmers expect, what do these letters mean? We know there are alternatives to foreclosure, but how free will Farmers Home be in negotiating with farmers that try to avoid foreclosure, and help them work their way out of their indebtedness problems?

I want to thank some of the members of the committee, particularly, that I know have helped try and get the attention of the Agency and explain the facts of life out there in the countryside to some who may not be as sensitive to this.

I know that Senator Andrews has talked to the Agency and others, and Senator Kasten and I were talking about it. Senator Kasten was wondering how he could speak for himself, and I thought that this hearing was pretty appropriate.

I wonder whether or not Farmers Home has hired the same people that the Social Security Administration had in reviewing the disability claims, certifying that they were ineligible for disability. Maybe they're putting them to work over there in the Farmers Home Administration. [Laughter.] Maybe that's the case, maybe it's not.

This morning, we do have a lot of interest in the hearing. Some of the Senators have an obligation to be elsewhere, I know, beginning at 11 o'clock this morning, so I hope this hearing will end at 11. I am going to stop now and simply ask the other Senators if they have any comments.

I hope we can hold the statements by Senators and the questions to 10 minutes each. We'll go around and let everybody have an opportunity to comment and ask questions and then go back around the group to make sure everybody gets a chance to speak who wants to speak or to ask questions if they want to ask questions. Senator Burdick.

## STATEMENT OF SENATOR BURDICK

Senator BURDICK. Thank you, Mr. Chairman.

Mr. Secretary, Mr. Administrator, I am pleased that you are able to appear before the committee today.

The issue that we are interested in here today concerns me very deeply. The new regulations issued by the Department have caused considerable confusion, stress, and fear. The administration of these regulations has shown anything but compassion, understanding, and consideration of our farmers. Frankly, I don't understand it.

On January 8, I went to Bismarck, ND, and conducted a field hearing on the farm credit situation. The complaints I heard about the Farmers Home Administration were overwhelming—from top State officials to bankers to farmers to others.

Quite sincerely, I felt sorry for the State FmHA Director since he was the only person at the hearing who stood up for the FmHA policies and practices.

I asked him about these notices that were to go out. I wanted to know what they were, what they said, to whom they were going, and how many might result in foreclosures.

Well, he down-played them considerably and told me, and this is a direct quote, "This is not a foreclosure letter." That sounded nice, but it couldn't have been further from the facts. So I read to him from the proposed notice, and I want to repeat it for you.

The statement is from FmHA Form 1924-25:

> If the above listed violation is not corrected by one or more of the actions described in the attached form * * * FmHA intends to accelerate your FmHA debts and foreclose on your real estate and/or chattels. This may include repossessing your chattels or in other ways proceeding against property which you own in which FmHA has a security interest, or terminating the release of sale proceeds.

I simply cannot comprehend how this notice could be considered anything but a notice threatening foreclosure. On Tuesday of last week, I wrote to Secretary Block and urged him to waive any further action under these regulations until the court case, pending in North Dakota, was resolved.

On Thursday, January 16, I had my staff contact your congressional relations staff about the issue. Your staff first tried to tell us that there was no injunction hearing scheduled on January 22, that the notice would still to go out on the 23rd, that he would check into it further.

Upon checking further, the congressional liaison staff acknowledged the court action but said the Department chose to ignore it.

I am shocked at this type of attitude on the part of the Agency which is supposed to be assisting the Department in these matters.

Mr. Chairman, I will reserve my other comments.

Senator COCHRAN. Senator Andrews.

## STATEMENT OF SENATOR ANDREWS

Senator ANDREWS. Thank you, Mr. Chairman.

It's good to be here and I appreciate your calling this hearing. I think it's time and I think it's necessary. I think that the events that have taken place last month show that we have a critical need in rural America to get some of these facts out on the table so farmers have an understanding of where we're going.

Farmers Home Administration, Mr. Chairman, has had a long and honorable history of providing the needed liquidity to American farmers who are responsible for the continuity for generations of farm families who turned out to be the backbone of our productive economy. It's traditional, of course, that the American farmer has gone to the Farmers Home Administration as the lender of last resort.

Mr. Chairman, you and I sit, not only on this subcommittee but also on the authorizing committee for Agriculture, and I am concerned that what we are witnessing is a fundamental change in the Farmers Home Administration, that neither of these committees endorses or supports.

We asked a lot of questions in this very room last year on the budget for last year, and we never did get a satisfactory answer. If we had gotten those answers we might have had the direction so we could have prevented some of the things that have taken place the last few months.

This Agency has recently proposed a number of regulations that dramatically undermine the longstanding relationship between farmers and the Government, not just the letters of intent, but other things as well.

This Agency proposed to send letters of intent to take adverse action on over 70,000 farmers, three-quarters of whom, by the Agency's own statement, stand a good chance of pulling through. It either shows a lot of lawyers are at work or a concerted attempt to change the role that Congress has long worked to protect. And then when this same Agency, Mr. Chairman, quietly slips a proposed regulation into the Federal Register on December 2, when all of us at this hearing table are busy trying to get a farm bill through—quite frankly, I didn't notice it, my staff didn't know, my colleagues didn't know it. If Cy Carpenter and the Farmers Union hadn't pointed it out to me, I wouldn't have known about it. A real sleeper.

It said the Administrator of the Farmers Home can preclude making any loans to any farmer who produces a crop or a commodity in surplus.

My gosh, Mr. Chairman, that eliminates all the farmers. You raise wheat, you can't get a Farmers Home loan; milk cows, you can't get a Farmers Home loan; raise corn, you can't get a Farmers Home loan.

If this Agency is going to pull things like this, because the bureaucrats are buried in it, you know we're only a couple of corn rows away from somebody trying to regulate sunshine. It's getting to be, as they have said, "ridiculouser and ridiculouser."

I talked with Vance Clark on these issues last week and I am pleased to say that he's going to change this proposed rule. In fact, I think he was as surprised about it as I was, which shows that the people at the top aren't trying to do these kinds of capers, but nonetheless, they're being done.

He also told me that 40,000 of the borrowers who are scheduled to get letters of intent will not now receive them. Still the direction of these events bothers me greatly, I welcome the chance to hear the statements of these individuals. Mr. Clark told me last week that of the 1,800 in North Dakota who were going to get those letters of intent, only 500 will now get them. I would hope that he can elaborate on that.

I would also hope that either he or Mr. Naylor can tell us about another thing that has turned up in North Dakota and maybe Mississippi, Mr. Chairman, and maybe in the other States and that is this strange one: When farmers came in last year with their two-party check made out, the check that they got for the production of their crops last year, they went in to get their living expenses for that year from Farmers Home. Farmers Home gave them their living expense, but only if they would sign over a chattel mortgage on their 1986 crop.

Now, after signing over the chattel mortgage to the 1986 crop, they go into Farmers Home now and FmHA says, sorry, we can't give you an operating loan for the 1986 crop.

Those farmers can't go down the street and borrow to put their crop in from anyone else, because Farmers Home has already extracted from them a mortgage on their 1986 crop.

Mr. Chairman, quite frankly, if a bank did that out in North Dakota, it would be an indictable offense and I resent the fact that an agency of the U.S. Government would go out and so prey on the farmers that they take away their opportunity to put their crop in for the next year in order to pay them the living expenses for the crop they produced a year before.

Now, if that's going on because of a policy from the top, it ought to be stopped. If it's being done because of some rationale on the local level, we ought to find out.

These are, I would hope, some of the questions that there will be answers to during the initial presentation and later through our questions, Mr. Chairman, and I appreciate you having us here.

Senator COCHRAN. Thank you. Senator Stennis.

## STATEMENT OF SENATOR STENNIS

Senator STENNIS. Mr. Chairman, I appreciate your remarks and I endorse what you said.

I think there is a time to hold a hearing, but at the same time we have got to get the crops in. We have got to do something to make things move. We've got to get to the end of the road. We are anxious to see that the farmers are given a fair chance to make good with this problem. I know every member here feels like we will back them up, but time has already run out for some, according to my observations. I am trying to back the men who are given the responsibility, but the Farmers Home Administration has got to recheck this thing.

I'm glad you're holding this hearing, Mr. Chairman, and I may have some questions later on.

Senator COCHRAN. Thank you, Senator. Senator Kasten.

## STATEMENT OF SENATOR KASTEN

Senator KASTEN. Mr. Chairman, thank you.

I appreciate your having called this hearing today to give those of us who are concerned with farm issues an opportunity to hear the Farmers Home Administration explain its new policy on delinquent loans. And I think it is important to recognize that because of congressional action by you, Mr. Chairman, and others of us, I think the policy that is going to be explained today will be different than the policy that would have been explained had we not gotten involved in the process a couple of weeks ago. We're making progress.

In this difficult time for agriculture, I believe that it is imperative that farmers with FmHA loans be treated with the consideration and the sensitivity that they deserve.

Farmers Home is supposed to be the lender of last resort and should be doing all that it can do to keep farmers in business, not drive them out through foreclosure.

When you look at this form letter that a number of us have referred to, you will see that the key part says, "We reserve the right to accelerate your FmHA debts and foreclose on your real estate." That's the form 1924-25, and that along with these other forms is what we are so concerned about. These "notices of intent to take adverse action" have scared the heck out us and a number of people who the Farmers Home is supposed to be working with. The idea that FmHA would send these notices to every farmer over 10 days and $100 delinquent on their loans is not acceptable in Wisconsin, it's not acceptable in Mississippi, and I don't believe it's acceptable anywhere in this country.

I am pleased that the congressional pressure on FmHA has borne fruit, and that the Agency has decided that no formal notice of adverse action will be sent to borrowers who are just a few months behind in their payments.

I understand that there may be a reason for the Farmers Home to take action in certain extreme circumstances, but a 10-day, $100 delinquency is not that kind of a circumstance.

Farmers Home should realize by this time the need to be sensitive. If the Agency had consulted those of us who are familiar with the farm credit situation in the farm States last year, today's hearing would have been unnecessary.

I want to make one other point about the farm credit issue in Wisconsin and the Midwest, which often gets lost when we talk about farm credit.

We're not going to be dealing with the Midwest's farm credit problem as long as we focus only on the Farmers Home Administration. The key component of the critical credit problem in Wisconsin is the heavy debt which is held by farmers who borrowed from the Farm

Credit System and commercial lending institutions and the high interest rates that they must pay.

Last year, I and some other members of this subcommittee supported an amendment to the Farm Credit System restructuring bill which would have allowed an interest rate buy-down on some loans held by FCS and commercial lenders.

That amendment would also have made possible the write down of the principal on some of these loans that are now held in the commercial sector. Although today's hearing is primarily on the Farmers Home Administration, I think that we need to remember that this Agency is not the most important component of the farm credit problem. I hope that we will have occasion to revisit the broader question of FCS and commercially held farm debt later this year. Thank you, Mr. Chairman.

Senator COCHRAN. Thank you, Senator Kasten.

Although not a member of the committee, I invited Senator Boren of Oklahoma to sit with the committee this morning.

There were many Senators and Congressmen who had contacted us and wanted an opportunity to testify at the hearing, and rather than that, since we have requested simply the administration witnesses this morning, I have invited Senator Boren to sit on this committee and without objection, you may proceed with any comment you would care to make.

## STATEMENT OF SENATOR BOREN

Senator BOREN. Thank you very much, Mr. Chairman.

First of all, I appreciate your allowing me to sit in, and I appreciate the leadership you have shown in bringing pressure to bear, along with others, to get the Farmers Home Administration to rescind this policy of sending out foreclosure notices to farmers who were only $100 behind on their debts. I hope we will have the response from the administration today that will assure us, before they take action in the future to foreclose on farmers, that they will run a county-by-county survey or a geographical area survey to determine the impact the foreclosure policy will have on land values. We could very well see a concentration of farm foreclosures in certain areas and could see the administration itself causing a further problem by causing a further decline in land values that would put more farmers out of business. We need to have this kind of assessment from the administration.

I also want to mention another matter that Senator Andrews referred to just a minute ago. While we were working on the farm bill, the Farmers Home Administration did slip in the Federal Register a proposed regulation that would allow them to deny any FmHA operating loans to those farmers who were planting any commodity in surplus. What that virtually means is that you would put the Farmers Home loan program out of business because every commodity except vegetables, virtually, would be disqualified from loans.

Senator Andrews has said that if you raise wheat or corn or cotton or rice or peanuts or soy beans or beef, you would not be eligible for a Farmers Home Administration loan, and how unfair is that when the farm bill we just passed, over the objections of some of us, requires the farmer, in order to get payments under the farm bill, to plant a certain portion of these same products that are in surplus.

So to comply with the farm bill, he has to plant, and now we have an agency turning around with the other hand and saying if you do plant, you can't get a loan.

So, I hope that they will also address this problem, Mr. Chairman, and give us some answers about this inconsistent policy which is certainly hurting farmers.

I would like to ask consent to submit, for the record, an opening statement and also a copy of the proposed rule for the Farmers Home and a statement from the National Farmers Union in opposition to this proposed regulation.

Senator COCHRAN. Without objection, those materials will be included in the record.

[The statement and accompanying information follow:]

## STATEMENT OF SENATOR BOREN

MR. CHAIRMAN, I COMMEND YOU FOR CALLING TODAY'S HEARING TO DISCUSS THE FARMERS HOME ADMINISTRATION'S POLICY ON FORECLOSURES. I APPRECIATE YOUR GIVING ME THE OPPORTUNITY TO PARTICIPATE IN THE HEARING.

I WAS VERY CONCERNED TO LEARN DURING THE RECESS THAT THE FARMERS HOME ADMINISTRATION WAS PLANNING TO TELL MORE THAN 1800 OKLAHOMA FARMERS THAT FORECLOSURE PROCEEDINGS COULD BEGIN WITHIN THE NEXT FEW MONTHS. LAND VALUES IN OKLAHOMA HAVE DECLINED DRAMATICALLY IN THE PAST COUPLE OF YEARS. IN SOME COUNTIES, THE DROP HAS EXCEEDED 50 PERCENT. TO SUDDENLY PUT MORE LAND ON THE MARKET ALL AT ONCE, WOULD BE DEVASTATING TO THE ECONOMY, PARTICULARLY AT THIS TIME OF DEPRESSION-LIKE CONDITIONS ALREADY PERSISTING IN THE RURAL SECTOR OF OUR ECONOMY.

MR. CHAIRMAN, I APPRECIATE YOUR LEADERSHIP IN SLOWING THE ADMINISTRATION DOWN ON SENDING THESE NOTICES OUT. I WAS VERY PLEASED TO LEARN THAT THESE NOTICES WILL NOT BE SENT OUT TO EVERYONE WHO IS BEHIND ON AN INTEREST OR PRINCIPAL PAYMENT BY MORE THAN $100. I AM PLEASED THAT ONLY THOSE WHO HAVE WRONGFULLY OR FRAUDULENTLY MISAPPROPRIATED SECURED PROPERTY OR WHO MAY HAVE VIOLATED THE TERMS OF THE SECURITY ARRANGEMENTS WITH THE FARMERS HOME ADMINISTRATION WILL BE GIVEN NOTICE OF AN INTENT TO TAKE ADVERSE ACTION.

IT IS STILL UNCLEAR TO ME WHAT THE DEPARTMENT HAS DECIDED TO DO ABOUT THE BORROWERS WHO ARE DELINQUENT BUT WHO DO NOT FALL WITHIN THE ABOVE CATEGORIES. I AM HOPEFUL

THAT THE DEPARTMENT HAS MADE A DETERMINATION IN THIS RESPECT AND WILL PROVIDE US WITH THE DETAILS THIS MORNING.

I AGREE WITH THE CHAIRMAN THAT IT IS AMAZING THAT THE FARMERS HOME ADMINISTRATION WAS PREPARED TO SEND OUT THE NOTICES WITHOUT SETTING UP THE PROCEDURES FOR FARMERS TO SECURE ALTERNATIVES TO FORECLOSURE. AT THE PRESENT TIME, IF THE NOTICES ARE IN FACT SENT OUT, THE COUNTY SUPERVISORS WILL HAVE NO WAY OF DETERMINING IF ANYONE IS ELIGIBLE FOR AN ALTERNATIVE, SUCH AS A DEFERRAL OF PRINCIPAL. WITHOUT THE GUIDELINES IN PLACE, COUNTY SUPERVISORS WOULD HAVE NO CHOICE BUT TO FORECLOSE ON EVERYONE WHO RECEIVES A NOTICE. I HOPE THE ADMINISTRATION IS PREPARED TO PROVIDE US WITH THESE GUIDELINES TODAY, AS WELL.

MR. CHAIRMAN, THIS WHOLE EXPERIENCE HAS BEEN MOST UNFORTUNATE. IT HAS SPREAD A SENSE OF PANIC THROUGH THE AGRICULTURAL SECTOR AND IT COULD HAVE BEEN AVOIDED. IT WAS ONE INSTANCE WHEN I BELIEVE THE ADMINISTRATION, IN ITS HASTE TO GET SOMETHING OUT, FORGOT TO THINK ABOUT ALL THE ASPECTS OF THE POLICY. SOMEWHERE, SOMEONE FORGOT TO THINK ABOUT THE IMPACT THIS WOULD HAVE ON THE LOCAL ECONOMIES OF AREAS IN WHICH A LARGE NUMBER OF FARMERS HAVE FARMERS HOME ADMINISTRATION LOANS.

I AM PARTICULARLY CONCERNED ABOUT HOW THE DEPARTMENT INTENDS WTO DEAL WITH BORROWERS WHO ARE DELINQUENT ON THEIR LOANS. I THINK IT WOULD BE TRAGIC AND ECONOMICALLY ILLOGICAL TO FORCE LARGE NUMBERS OF FARMS ON THE MARKET ALL AT ONCE. I AM VERY CONCERNED ABOUT WHAT WILL HAPPEN IN SOME OF THE COUNTIES IN OKLAHOMA IF THERE IS A DRAMATIC INCREASE IN FORECLOSURES IN THOSE COUNTIES. I STRONGLY

BELIEVE THAT BEFORE ANY FORECLOSURES OCCUR, THE FARMERS HOME ADMINISTRATION MUST TAKE INTO ACCOUNT THE AFFECT THE FORECLOSURES WILL HAVE ON THE LAND VALUES IN EACH COUNTY. WE SIMPLY CANNOT AFFORD TO HAVE THE FARMERS HOME ADMINISTRATION DRIVING DOWN THE ALREADY-DEPRESSED VALUE OF LAND. WITH ONE STROKE, THE FARMERS HOME ADMINISTRATION CAN TURN A COMPLETELY SUCCESSFUL FARMING OPERATION INTO A DISASTER AS THE NET WORTH OF THE OPERATION, ON PAPER, QUALIFIES IT FOR BANKRUPTCY.

I HOPE THE ADMINISTRATION IS PREPARED TO COMMENT ON ALL THESE ASPECTS. AGAIN, I APPRECIATE YOUR ALLOWING ME TO PARTICIPATE TODAY, MR. CHAIRMAN. I DO HAVE SOME SPECIFIC QUESTIONS FOR THE DEPARTMENT WHICH I WOULD LIKE TO ASK AT THE APPROPRIATE TIME.

[From the Federal Register, Dec. 2, 1985]

# RESTRICTING INSURED AND GUARANTEED OPERATING AND FARM OWNERSHIP LOANS FOR FINANCING SURPLUS AGRICULTURAL COMMODITIES

**SUMMARY:** The Farmers Home Administration (FmHA) proposes to amend its insured and guaranteed Operating and Farm Ownership Loan regulations to allow the Administrator to restrict loans for purposes which finance agricultural commodities that are in surplus. (This action is being taken to support other Governmental (USDA) actions to reduce production and strengthen depressed prices.) The intended effect is to reduce production of such commodities.

**DATES:** Comments must be submitted on or before January 31, 1986.

**ADDRESSES:** Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments are made pursuant to this notice will be available for public inspection during working hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Yaxley, Jr., Senior Loan Officer, Farm Real Estate Production Division, Farmers Home Administration, USDA, Room 5449-S, Washington, D.C. 20250, telephone (202) 447-4572.

**SUPPLEMENTARY INFORMATION:**

## Classification

This proposed action has been reviewed under USDA procedures established by Departmental Regulation 1512-1, which implements Executive Order 12291, and it has been determined to be non-major because there is no substantial change from practices under existing rules and no annual effect on the economy of $100 million or more; or a major increase in cost or prices for consumer, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

## Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance: 10.406—Farm Operating Loans, 10.407—Farm Ownership Loans.

## Intergovernmental Consultation

Intergovernmental Consultation should be carried out in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and activities." For affected programs see FmHA Instruction 1940-J, available in any FmHA office.

## Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Subpart A of Parts 1941 and 1943 and Subpart B of Part 1980 contain the policies, procedures and authorizations for making operating and farm ownership loans.

The primary change is to provide the Administrator with the authority to restrict loans for such periods as necessary for purposes which finance agricultural commodities which are in surplus production, the supply is depressing prices and/or other Governmental (USDA) action is being taken to reduce productions.

## List of Subjects

*7 CFR Part 1941*

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

*7 CFR Part 1943*

Credit, Loan programs—Agriculture, Recreation, Water resources.

*7 CFR Part 1980*

Agriculture, Loan programs—Agriculture.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

## PART 1941—OPERATING LOANS

1. The authority citation for part 1941 is revised to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Operating Loan Policies, Procedures, and Authorizations

2. Section 1941.17 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

**§ 1941.17 Loan limitations.**

* * * * *

(b) The Administrator may restrict loans for financing the production of agricultural commodities, such as crops, livestock, or livestock products, for such periods as are necessary, when such items are in surplus production, the supply is depressing prices and/or other Governmental (USDA) action is being taken to reduce production. A Notice will be published in the Federal Register whenever the Administrator decides to impose such a restriction. The Notice will state the commodity which is in surplus, the beginning and ending dates of the restriction, and the reason for the restriction. A copy of the Notice will be distributed to FmHA offices.

## PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

3. The authority citation for Part 1943 is revised to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

4. Section 1943.17 is amended by adding paragraph (d) to read as follows:

**§ 1943.17 Loan limitations.**

* * * * *

(d) The Administrator may restrict loans for financing farms that produce agricultural commodities such as crops, livestock, or livestock products, for such periods as are necessary, when such items are in surplus production, the supply is depressing prices and/or other Governmental (USDA) action is being taken to reduce production. A Notice will be published in the Federal Register whenever the Administrator decides to impose such a restriction. The Notice will state the commodity which is in surplus, the beginning and ending dates of the restriction, and the reason for the restriction. A copy of the Notice will be distributed to FmHA offices.

## PART 1980—GENERAL

5. The authority citation for Part 1980 is revised to read as follows:

Authority: 7 CFR 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 88 Stat 392; 7 CFR 2.23; 7 CFR 2.70

### Subpart B—Farmer Program Loans

6. Section 1980.101 is amended by adding paragraph (f) to read as follows:

**§ 1980.101 Introduction.**

* * * * *

(f) *Restrictions.* The Administrator may restrict guarantees of loans for financing the production of and the purchase of farms that produce agricultural commodities such as crops, livestock, or livestock products, for such periods as are necessary, when such items are in surplus production, the supply is depressing prices and/or other Governmental (USDA) action is being taken to reduce production. A Notice will be published in the Federal Register whenever the Administrator decides to impose such a restriction. The Notice will state the commodity which is in surplus, the beginning and ending dates of the restriction, and the reason for the restriction. A copy of the Notice will be distributed to FmHA offices.

Dated: April 26, 1985.

Dwight O. Calhoun,

*Acting Associate Administrator, Farmers Home Administration.*

## Letter From Cy Carpenter, President, National Farmers Union

January 3, 1986

The Honorable David Boren
Subcommittee on Agricultural Credit
and Rural Electrification
Committee on Agriculture, Nutrition,
and Forestry
United States Senate
Washington, D.C. 20510

Dear Senator Boren:

As you are no doubt aware, the Farmers Home Administration recently published a proposed rule which would allow the Administrator of FmHA to restrict loans for purposes which finance production of agricultural commodities that are in surplus. (Federal Register, Vol. 50, No. 231, page 49395.)

Such an action would allow the Administrator to deny both insured and guaranteed loans for both operating and/or farm ownership loans to any producer producing such a commodity deemed in surplus.

Certainly, we recognize the necessity for the Department of Agriculture to implement programs to reduce the production of those commodities which are now in surplus; but, this is not the manner to accomplish that goal. Carried to the extreme, this rule would allow the Administrator to deny to any producer an operating loan for his 1986 plantings of virtually any of the basic commodities, plus soybeans, or for any livestock producer.

We are concerned, that given the budgetary restraints under which the Department will be operating, that such actions will be taken to limit producers' access to necessary FmHA operating and ownership loans.

To deny operating loans in this manner will simply exacerbate the financial condition of many producers and force many more out of business.

To alleviate this situation, we urge that you prepare and introduce legislation at the very beginning of the coming session of Congress to deny such authority to the Secretary of Agriculture or any of his designees.

Planting season is almost upon us and such adverse action by the Farmers Home Administration is the last thing that farmers need at this time.

We hope that you agree with us that this is a serious problem which warrants your immediate attention and corrective legislative action.

If you have any questions or would like to discuss this matter more fully, please give our Director of Legislative Services, Robert Mullins, a call in our Washington office (554-1600).

I will appreciate your prompt attention to this issue.

Sincerely,

Cy Carpenter
President

### STATEMENT OF SENATOR MATTINGLY

Senator COCHRAN. Senator Mattingly.

Senator MATTINGLY. Thank you, Mr. Chairman.

I am glad to have the opportunity to participate with the committee here this morning.

I think that as soon as the Congress can deal with this problem, the farm problem, the better off the whole country is going to be. However, I think that in order to effectively deal with the problem, I think that we have to have accurate, factual data and absolute candor and openness from the USDA.

In short, I think we have to deal with reliable facts that are provided and be able to know that what the committee is told is really the way the program is going to be administered out there in the field.

These are not easy times in the State of Georgia or anywhere else, but I think we are in a position to either make things right and better, or an ability to make things drastically worse for a large number of the farm producers.

I don't think anybody here on the committee wants to sit here and be told that an array of loan servicing options are going to be used to their full extent and then be flooded later with telephone calls which indicate that they're not, in fact, being used whatsoever. I would much rather you tell us, up front, "Senator Cochran, Senator Mattingly, this is the option and this is the number of distressed farmers and when we get through writing the regulations, nobody will be able to qualify for the program."

So we've got a lot of contradictory type of information and I think when the Congress went in recess, I notice in my own State, I can't quote the headline exactly, but I recall one headline said, "53 percent of the farmers are delinquent in the State of Georgia." Of course, the article further stated that it was only 53 percent of the farmers that had borrowed from the Farmers Home Administration, but it struck a lot of fear out there into a lot of farmers. So there has been a lot of bad information coming out.

I would like for you to address this and some of the options you're saying that the delinquent farmers would be able to have. One of them mentioned is in reference to the amendment that I introduced, the Family Homestead Act. I hope that you're going to put this in the Federal Register, for somebody that does go into foreclosure. I think the Department of Agriculture has an option that says you can go ahead and stay on your family homestead, and you also give them a certain number of acres surrounding the house and that would allow people who have been in their homes for a long number of years to remain. I don't think what we want to do is destroy the land values any further.

Mr. Chairman, I won't take up any more of the time, and I would just say that I hope we can work together, in concern, with the Department and get about the business of improving the farm sector.

Senator COCHRAN. Thank you, Senator. Senator Abdnor.

## STATEMENT OF SENATOR ABDNOR

Senator ABDNOR. Thank you, Mr. Chairman.

I wish to commend you for calling this hearing. It is extremely important that we get some answers to our FmHA questions! I can think of no other subject, at this moment, that is more important than what we are talking about today. I think we're all here with the hope of getting answers to questions arising from recent FmHA actions. The farmers are sorely in need of answers and our help.

Last year, Mr. Chairman, the outcome of meeting after meeting with both parties, the Secretary of Agriculture and the White House, it was agreed that all farmers eligible for a loan would be able to apply for one! There is just nothing on the horizon that would indicate that things are going to get that much better, in fact, I am repeatedly hearing rumors that FmHA will not be accepting firsttime borrowers.

Since that time I have heard stories from farmers and they're all saying that they couldn't borrow if they hadn't borrowed before that time. There are farmers in my State who desperately need credit and are now eligible for FmHA assistance in every way. I hope it doesn't come to the point that we have to tell farmers that if they haven't had a loan in the past, they are not eligible today!

I can tell you that this is one of the most important concerns right now. During the recess, my staff and I had a total of 140 meetings across South Dakota, where we discussed agriculture, credit, and other problems confronting us. It was the concensus that credit problems are right back where they were last year.

So, I think with all the stories and rumors—and I hope they're just stories and rumors—we need answers for the people back home as to what needs to be done to qualify for loans. If they're eligible for an FmHA loan it is my desire that we make it possible for farmers to borrow that money.

Finally, I just want to thank you for calling this hearing and give the witnesses a chance to testify so that we can have questions and concerns answered.

Senator COCHRAN. Thank you very much, Senator. Senator Harkin.

## STATEMENT OF SENATOR HARKIN

Senator HARKIN. Thank you, Mr. Chairman, and I too want to compliment you for calling this kind of hearing.

I know the farmers in Iowa were considerably upset when it became apparent that the Farmers Home Administration was going to proceed against them prior to any decision being made in the court case, the hearing of which was just held, I think, about 2 days ago.

However, just a cursory reading of the testimony by Mr. Clark, I see that the Farmers Home is backing off its recent intention and it now looks as though they will just proceed against borrowers who are 3 years delinquent or who have abandoned their property or secured property.

That may be partly true, but it raises another couple of questions. First, it's a little unsettling to this Senator to see an agency ignore regulations that it has spent 1½ years developing and all the sudden just ignore them, even though it's in our benefit and in our favor for our farmers. It makes you wonder what they were doing for a year and a half down there.

The second thing that is a little unsettling to me is if they are going to proceed then to foreclose against the remaining farmers, I wonder when that will be. I tend to think and I would predict that it will probably be about 2 days after the election this November, when they will begin to proceed against those other farmers.

In Iowa, last year, we had 16,156 Farmers Home borrowers for the entire State. Now, I will say this for the people in Iowa. Farmers Home people in Iowa, I believe, have done a good job, under the circumstances that they have had to work. We've had 6,898 borrowers who are scheduled to reamortize, but the big problem is in the number of deferrals and that is what farmers really need is a deferral.

Out of the 16,000 borrowers in Iowa last year, Mr. Chairman, we only had 402 deferrals for the entire State for last year. That gives you some indication, I think, of what has been going on, not at the State level, but somewhere on up the chain.

Through our witnesses who are here, Mr. Clark and Mr. Naylor, in my line of questioning, just so that you're forewarned and forearmed, I intend to pursue a line of questioning, both of you, concerning new provisions in the farm regulations, more specifically, title XIII and even more specifically, sections 1312, 1313, and 1320 of the new farm bill, with some new credit tied with the farmer which relates directly to Farmers Home Administration, and I am going to be asking you, gentlemen, what steps you have taken and how soon you will implement those new titles of the farm bill.

I will point out to you right now that the title does not say, "the Secretary may," it says, "the Secretary shall," in each of these instances and that is the line of questioning I will be pursuing with you. Thank you.

Senator COCHRAN. Thank you, Senator.

# DEPARTMENT OF AGRICULTURE

## FARMERS HOME ADMINISTRATION

### STATEMENT OF FRANK NAYLOR, UNDER SECRETARY OF AGRICULTURE FOR SMALL COMMUNITY AND RURAL DEVELOPMENT

### ACCOMPANIED BY VANCE CLARK, ADMINISTRATOR, FARMERS HOME ADMINISTRATION

#### OPENING REMARKS

Senator COCHRAN. Mr. Naylor, you may proceed.

I think you have heard the concerns of some of the members of the subcommittee. We would like to hear now from you and Mr. Clark about the intentions of the Agency with respect to delinquent borrowers and the Farmers Home policies.

Mr. NAYLOR. Thank you, Mr. Chairman. I have with me today, Mr. Clark. We do have a formal statement which we will submit for the record and make some opening comments.

If I might, following the comments of the members of the committee, I would like to offer, if I may, comments of my own.

If I had watched the media and statements of individuals and organizations over the last 30 or 60 days, I would certainly come to many of the same conclusions and concerns that those of you on the subcommittee that have the responsibility of representing your State have.

If they had merit, if they were even accurate in their assertions, you, justifiably, would have some concerns to be raised.

I heard very similar statements from the same individuals and the same organizations for the last 4 years at the beginning of each lending season—that this administration was intent upon taking out thousands and thousands of distressed farmers and putting them out of business.

#### FMHA POLICY OF LENIENCY

To those of the press that are here today, I suggest that you go to the end of each lending season and look at the stories that you wrote at that time as you came back to us and said, "What happened?" It didn't come true, and the reason that they didn't come true is that that has never been the policy of this administration—has not been, is not now, and will not be in the future.

This administration has more than demonstrated its compassion for the American farmer through the Farmers Home Administration and, indeed, the most recent independent audits by the General Accounting Office and by the Inspector General's Report are severely critical of the Farmers Home Administration. Not that it has been unfeeling and without compassion, but that it has been far too liberal to the point that it has made loans which it cannot realistically expect to ever be repaid, and to stay with and continue to help the American farmer make it through some very difficult periods.

The courts over the last several years have said, as has been the case for a number of years in our housing programs, that anytime you address or contact any borrower who has a problem and which might ultimately lead to some adverse action on the part of the Government you must, on the instance of the first contacts, advise that borrower of every option, right, and authority and ultimate action which the Government must face.

You must advise him of that and you must establish a consistent procedure as it applies to everyone. You are obliged to give servicing options in written form.

## WRITTEN OPTIONS REQUIRED

The letters which raised so much concern respond to that requirement much as they did in the case of our housing programs, of simply saying to a borrower, "Here is a procedure, here are your rights, and here is what you can expect from your Government." What you can expect from your Government first and foremost is understanding and compassion in a series of actions, seven in number, in which we are prepared to assist you to overcome the difficulties which you face. Over the last 4 years we have applied understanding and compassion several hundred thousand times to our borrowers and intend to continue to do so.

Then and only then, after we have exhausted every remedy and have worked with you in every conceivable way and are unable to come to a satisfactory resolution, you may take exception with us and appeal that decision. While you are doing so the Agency will take no further action. Only after all of these extensive remedies are exhausted may the Agency pursue a course which might lead to a foreclosure.

When you are honest and straightforward in providing an individual all that information in one document, those who wish to cause stress and fear in an environment that is already under severe stress and fear and wish to lift out of context the thrust of that material, can do so. To lift out of context the thrust of that entire document and to call it a foreclosure action, which many individuals and groups have done, has justly raised those questions in your minds. In my view, Senators, it is the height of irresponsibility in an environment where the American farmer is already under severe stress and certainly doesn't need any more.

## FMHA POLICIES UNCHANGED

The policies of this administration are not changed and haven't changed. You have guided us well in your intent and your desire. We intend to continue to reach out and provide the full range of servicing options that we have been provided by the Congress of the United States as we have done for the last 4 years and will continue to do.

We intend to continue to hold land off the market as we have and were the leader in those areas where a sale would further depress, unnecessarily, land values.

Mr. Chairman, I am deeply concerned that perhaps well meaning as they have been, statements of some individuals and organizations in many of your States which raised a concern which appropriately led to this hearing today have indeed substantially increased the stress and unnecessary fear and concern of all farmers.

It was clear to us that no statement we could make, no assertion we could make, would fully, clearly relieve that concern.

Mr. Chairman, for the last 4 years, despite the fact that our borrowers, by definition, cannot get credit from any other source, we have been able to continue with 97 to 98 percent of our borrowers. We have provided more liberal assistance to them than any proposal now before any State, under any moratorium—including Iowa's—than is available from any other lender. We will continue to do that and we will continue to show the compassion that I believe you expect of us and we are obligated to show if we are to carry out our responsibilities.

Thank you, Mr. Chairman, for letting me make a few general comments.

I will turn it over to Mr. Clark, Administrator of the Agency.

Senator COCHRAN. Thank you, Mr. Naylor. Mr. Clark, of course, we have your written statement prepared for the committee. We thank you and that will be included in the record in full.

You are free now to make any comments or responses that you care to make.

### FMHA TO STAND BY ITS BORROWERS

Mr. CLARK. Well, coming from the private sector and having been in this position less than 6 months, I can tell you, Senator Mattingly, that that is my style to be absolutely open and with all candor with everyone, with our borrowers and with our Agency as well. That might get me in trouble in Washington, but that is my style and I want to tell you that we have indeed worked very hard to implement some of these things—sensitivity, understanding, and empathy—out in the field. We have had many hours of training with our people getting them ready for this very stressful lending season. We have done everything to gear up for the demand.

By the same token, to be professional in what we do and even look at those debts that are outstanding, we need, I think, to be more businesslike in our approach to the collection of the debts that are owed to the Government, to the Agency; and our emphasis will be to collect those borrowers' debts, to work with those borrowers down to the last ditch. Our borrowers who are 3 years or more delinquent, and those borrowers who have been dishonest with us over the past few years, who have various collateral and other means at their own use, certainly from a professional point of view and from a prudent lender's point of view, need a very close look.

BEST COPY AVAILABLE

Certainly we want to be able to service every borrower who comes to us. I think you need to be prepared to face, with us, the possibility that this might not happen.

In no way can we guarantee success of every borrower who appears at our door in 1986, but we're going to do our best to work with those distressed farmers and see if we can't put together a workable plan.

As Mr. Naylor has told you, on the debt deferral, some alternatives are being offered to our borrowers. I think we offer great opportunities for them and a deferral is indeed a big plus. Nobody else is offering such generous terms. That is one of the things that we are going to try and do. We are always able to listen and want to listen, as in your suggestion, as we go forward.

Senator COCHRAN. Thank you, Mr. Clark.

[The statement follows:]

## STATEMENT OF VANCE L. CLARK

Mr. Chairman, members of the committee, I appreciate this opportunity to discuss the Farmers Home Administration's (FmHA) servicing regulations and notices to farm borrowers who are seriously behind in loan payments.

A brief background is necessary for a complete understanding of FmHA's goals and procedures.

For many years the Farmers Home Administration has been helping its farm borrowers who found themselves in economic trouble through no fault of their own. The agency routinely helped these farmers, when possible, through rescheduling or reamortizing loans and in some cases deferring part of their payments. The direction to the field to provide this assistance came from the national office through regulations and Administrative Notices.

In November 1983, the Federal District Court in Bismarck, North Dakota, issued a preliminary injunction, that later became permanent, which required Farmers Home to take steps to inform borrowers of the loan servicing alternatives available to them.

On November 30, 1984, the agency issued a proposed rule in the Federal Register to comply with the court ruling. Following the comment period and necessary adjustments, the regulations were issued as a final rule on November 1, 1985. The regulations, encompassing 63 pages of the Federal Register, covered all options and procedures in minute detail. Certainly, the agency made every effort to comply with the court's mandate to assure due process for every FmHA borrower.

The options are clearly spelled out in notices which are being sent to FmHA farm borrowers who were delinquent as of December 31, 1985. That date was selected because it is historically the lowest delinquency point of the year. Most of the loan agreements call for an annual payment which is due on or about January 1. So most borrowers receiving the notices are at least one year delinquent.

The intent of the notice is to alert the farmer that he or she is seriously delinquent in loan payments and to spell out the various options available to help bring the account current.

Those options include:

o Rescheduling at regular rates and terms;

- Rescheduling of operating and farm ownership loans at limited resource rates and terms;
- Deferral of payments on principle or interest or both for 5 years;
- Subordination of FmHA's security interest to another lender;
- Restructuring by selling a portion of assets;
- Paying the account current; and
- Liquidating the account by selling, conveying to the Government or transferring the security.

Eligibility for these options is spelled out in detail in the regulations. Basically, to be eligible, borrowers must show that their delinquency is due to circumstances beyond their control; that they have lived up to all agreements made with FmHA; and that, with the extra assistance, they can eventually repay their loans.

All FmHA borrowers who have made no payments for three or more years as of December 31, 1985, or who have failed to properly account for security property, or who have abandoned the farming operation will be sent by registered mail a notice of "Intent to Take Adverse Action." It will cite the specific problem with the borrower's account and require the borrower to respond within 30 days.

When the borrower's response is received, an appointment is set up to review the borrower's financial condition. If one of the servicing options is approved, the notice to take adverse action is terminated. If the borrower fails to respond within 30 days or the servicing options cannot restructure the debt, FmHA will proceed to collect the account. Failure to respond within 30 days also forfeits any appeal rights.

Borrowers who are less than three years delinquent will receive a registered letter requiring them to contact the county office within 30 days to make an appointment to try to work out their loan problems. The same list of servicing options will be available to them. These borrowers will not receive a notice of intent to take adverse action.

The idea is to have the farmer and the FmHA county supervisor sit down together and develop a workout plan that yields a payment schedule that can be handled within the farmer's cash flow.

In addition to the options in the FmHA regulations, the Farm Bill containsa number of provisions that are presently being analyzed. They include the softwood timber section, conservation easements, and the homestead provisions.

Only after every option has been tried and failed will there be any move toward additional action. Even then, the borrower has a right to appeal FmHA's decisions.

It is expected, that with all the options and assistance available to FmHA borrowers, many will be able to work out of their financial difficulties. There are some that are so far behind that no amount of assistance can help. Of course, we cannot estimate the number of farmers that will be in that category until we have made every effort to help them work out a reasonable solution to their problems.

Mr. Chairman, this FmHA forbearance policy offers borrowers much more assistance than the policy of any other lending institution that I am aware of. The 5-year deferral option alone offers more relief to borrowers than typical state moratoriums which, at best, prohibit foreclosure for a year if the borrower can make interest payments.

I believe the Farmers Home Administration is making every possible effort to assist its seriously delinquent farmers under these regulations. Predictions by some of massive foreclosures under these regulations are unwarranted in my view.

We believe we are making a fair, reasonable and equitable attempt to provide every possible assistance to farmers who are behind in paying their debts to the government while, at the same time, carrying out our responsibilities to the Nation's taxpayers.

I'll try to answer any questions you or other members of the Committee may have.

### MR. CLARK'S RESPONSE TO COCHRAN LETTER

Senator COCHRAN. So that we can complete the record, I want to insert, as a part of the record, the response to my December 3 letter, which I received as chairman of the subcommittee from Mr. Clark, which is dated January 21, 1986, as well as a copy of the letter dated January 22, from Mr. Clark to me in which are enclosed the new instructions and the new letters that will be used to go out to the delinquent borrowers from the Farmers Home Administration.

[The letters follow:]

## LETTER FROM VANCE L. CLARK

JAN 21 1986

Honorable Thad Cochran
Chairman, Subcommittee on Agriculture,
Rural Development and Related Agencies
Committee on Appropriations
United States Senate
Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

This is in reply to your letter of December 3, 1985, regarding the Farmers Home Administration (FmHA) regulations pertaining to delinquent borrowers, and I do apologize for the delay in responding.

Previous FmHA regulations required that FmHA terminate the release of proceeds from the sale of chattel security prior to an appeal of the action. The new regulations referred to in your letter were issued primarily as a result of court decisions.

The notice and attachments which you refer to in your letter are sent to the borrower not only to inform the borrower of the default but also provide information regarding the servicing alternatives available to attempt to cure the default. For a monetary default, a borrower may request such assistance as rescheduling, reamortizing, or deferring payments on the loan. Farm ownership and operating loans may be rescheduled at a lower interest rate (limited resource) if the borrower meets certain guidelines. In addition, the regulations provide for more involvement of the borrower in planning the use of proceeds from the sale of FmHA chattel security and thus enable the borrower to be better informed of the availability of various FmHA servicing authorities.

The regulations offer borrowers the opportunity to restructure their indebtedness. It is FmHA's intent to use all its authorities to assist borrowers to continue farming when a reasonable chance of success exists. We will not be able, however, to keep everyone in business. Some borrowers are so deeply in debt that they cannot be saved.

I regret, Senator, that since my arrival at FmHA we have not had the opportunity to meet personally. Yet, it was nice to chat with you by telephone when I visited Mississippi recently. I did appreciate your kind words, and I did enjoy my visit to your fine State. The farmers of Flora were indeed most hospitable.

I appreciate your interest and concern about the farm situation and look forward to discussing personally our policies with you.

Sincerely,

VANCE L. CLARK
Administrator

## LETTER FROM VANCE L. CLARK

January 22, 1986

Honorable Thad Cochran
United States Senate
Senate Russell Office Building
Washington, D.C. 20510

Dear Senator Cochran:

I hope that was an understanding tone in your voice this morning. Again, I apologize for the lateness in getting back to you regarding your recent letter having to do with our new servicing regulations. So that you might be better informed, I am enclosing the final draft of our servicing letters. Attachment A, which includes our infamous "Intent to Take Adverse Action" letter will be mailed, probably beginning about February 10, to the borrowers who are three years or more delinquent with us, totaling about 27,000.

Attachment B, which does not include the letter of "Intent to Take Adverse Action," but has the other attachments explaining the options available to them, will go to those borrowers, numbering about 28,000, who are less than three years delinquent.

I hope our new servicing plans will not only meet the legal demands of our Agency, but more importantly, meet the needs of our borrowers out there in Rural America.

Again, it was nice chatting with you. I look forward to seeing you again on Friday.

Sincerely,

Vance L. Clark

VANCE L. CLARK
Administrator

Enclosures

[ATTACHMENT A]

Dear Borrower:

This letter and the accompanying material is extremely important to you since it concerns your loan with the Farmers Home Administration. Please-----I urge you to read all of this carefully.

As you well know, your loan with us is seriously delinquent or has other serious problems connnected with it. This situation requires your immediate attention. New regulations adopted by the Farmers Home Administration, as mandated by the Federal courts, require us to send you the enclosed letter. You now have 30 days in which to respond should you wish us to consider any of the alternate servicing actions outlined.

These are of course difficult times in agriculture and you now need to make some tough decisions as to your future. Your loan with us, which is in default, makes your decisions even more difficult.

We at the Farmers Home Administration will do what we can to help. You need to read carefully the attached material and to respond to us within 30 days so that we may meet with you and perhaps advise you as to what relief, if any, we may be able to offer.

Again----please read the enclosed information very carefully and return the required form to the local County FmHA office within the next 30 days.

Sincerely,

VANCE L. CLARK
Administrator

FmHA 1924-14
(Rev. 1-86)

*Position 3*

DRAFT
1/21/86

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

## NOTICE

## FARMER PROGRAM BORROWER SERVICING OPTIONS INCLUDING DEFERRALS AND BORROWER RESPONSIBILITIES

**Servicing Options**

All borrowers are expected to repay their loans according to planned repayment schedules. However, sometimes borrowers will not be able to pay as scheduled. If this happens, you may inquire about the following servicing options:

I. Deferral:

An approved delay in making regularly scheduled payments. Such a delay may be granted if FmHA finds that, due to circumstances beyond your control, you are temporarily unable to continue making the scheduled payments on such loan(s) without unduly impairing your standard of living. A more detailed description is available at any FmHA Office.

II. Limited Resource Program:

The Farmers Home Administration (FmHA) has authority to make limited resource farm ownership and operating loans to qualified applicants.

The program provides credit at an interest rate which is lower than FmHA's regular interest rate.

In addition to making loans at reduced interest rate, borrowers with existing farm ownership and operating loans who qualify as limited resource operators may have their loans rewritten at the lower interest rate.

III. Consolidation:

Combining and rewriting similar type loans made for operating purposes at new rates and terms.

IV. Rescheduling:

Rewriting loans made for operating purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

V. Reamortization:

Rewriting loans made for real estate purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

VI. Subordination of the FmHA lien to the lien of another creditor.

VII. Restructuring the business and debt by selling a portion of your assets.

If you would like additional information regarding any of the above items and how to apply you should contact the FmHA County Supervisor. You will be asked to attend a conference with the FmHA County Supervisor and you must furnish the information necessary for FmHA to make a decision on your request. The County Supervisor can advise you of the information needed for a decision.

### FARMER PROGRAM BORROWER RESPONSIBILITIES

Please read carefully the following summary of major FmHA requirements. Farmer Program insured borrowers should understand what the Farmers Home Administration (FmHA) expects of them and how FmHA can be of better service. This is *not* a complete list of all responsibilities of an FmHA borrower; this highlights only *some* of those responsibilities.

**RESPONSIBILITIES CONSIST OF, BUT ARE NOT LIMITED TO, THE FOLLOWING:**

| | |
|---|---|
| **PAYMENTS:** | Payments are due as agreed upon in the note(s). It is essential that payments be made on time. Extra payments are encouraged whenever possible. |
| **SECURITY:** | The loan(s) is secured by a Financing Statement and Security Agreement and/or a real estate mortgage or other security instruments (depending upon the type of loan or security). These instruments give FmHA a valid lien on crops, chattels, land, etc., as applicable. |
| **USE OF LOAN FUNDS:** | FmHA loan funds will be used for the purpose(s) shown on the Farm and Home Plan or other plan of operation acceptable to FmHA, and/or Development Plan in cases of real estate improvements. |

EST COPY AVAILABLE

**RELEASES AND SALES:** The Form FmHA 1962-1, "Agreement For The Use of Proceeds/Release of Chattel Security," which you signed is the agreement between FmHA and you which explains what sales you plan to make, approximately when and to whom those sales will be made, and how the proceeds from those sales will be used. You must inform FmHA if you want to make any sales which are not listed on the form, if you want to sell to a purchaser not listed on the form, or if you make a sale and you receive an amount of proceeds different from the amount listed on the form. It may be a violation of Federal criminal law to make sales which have not been authorized on Form FmHA 1962-1 or to fail to account for sales proceeds.

**CHANGES IN OPERATION:** FmHA agreed to lend you money based on facts which you supplied about your operation. If any changes occur in your operation you should notify the FmHA County Supervisor at once.

**RECORDKEEPING:** You must select and maintain a recordkeeping system which adequately meets the needs of your farming operation and which provides, as a minimum, a record of the annual cash flow, beginning and end of the year balance sheets, and an income statement. Recordkeeping systems may include the farm record book available through FmHA (Form FmHA 432-1, "Farm Family Record Book"), other record books, or a suitable system offered by a farm management service, State Extension Service, or commercial record keeping or accounting service, which is acceptable to FmHA. If you receive emergency loans of $100,000 or more, you are required to use a recordkeeping system or accounting service which provides, as a minimum, a monthly cash flow statement, a change in financial position statement, beginning and end of year balance sheets, and an income statement. EM borrowers are encouraged to use a computer recordkeeping system when available.

(Costs for training farmer program borrowers, particularly limited resource borrowers, in recordkeeping for farm and ranching operations are an authorized loan purpose in accordance with Section 1941.16(1) of FmHA Instruction 1941-A.)

**VIOLATION OF RESPONSIBILITIES:** Violation of any of the above responsibilities may result in denial of further FmHA assistance, and could cause your FmHA loan(s) to be accelerated.

If the violation results in your FmHA loan(s) to be accelerated, you may have the opportunity to retain possession of the principal residence. Options available are (a) refinancing with another lender, (b) assumption on ineligible rates and terms, (c) lease from the Government for not less than three nor more than five years with an option to reacquire the property after the leasing period.

*Position 3*

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

Form FmHA 1924-25
(1-86)
Notice of Intent to Take Adverse Action

____________________
*(Date)*

Dear:

As outlined below, your account with Farmers Home Administration (FmHA) is delinquent or there are other problems affecting your borrowing relationship with us.

We need to jointly attempt to work out a satisfactory solution to your credit problems through the various servicing options available. For your information and review, we have included with this material a copy of the FmHA notice entitled "Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities" (Form FmHA 1924-14).

This notice requires a response from you within 30 days, using the attached Form FmHA 1924-26. That form offers you the opportunity to request consideration for a number of servicing options. Further details are provided below.

We have conducted a review of your Farmers Home Administration (FmHA) loan accounts and determined the following where checked:

- ☐ You are presently $ ________________ behind schedule on your FmHA loan installments which is a violation of your note and mortgage and/or security agreement.
- ☐ You have made unapproved disposition(s) of property that is covered by security instruments which secure your FmHA indebtedness. The property in question is ____________________ *(describe property)* .
- ☐ You have stopped farming or ranching which is a violation of your loan agreements.
- ☐ You have ____________________ *(insert the reason(s) for the proposed adverse action)*

If the above listed violation(s) is not corrected by one or more of the actions described in the attached Form FmHA 1924-26, FmHA reserves the right to accelerate your FmHA debts and foreclose on your real estate and/or chattels. This may include repossessing your chattels or in other ways proceeding against property you own in which FmHA has a security interest or terminating the release of sales proceeds.

You may with regard to your Operating Economic Emergency, Emergency, Farm Ownership, Soil and Water, Special Livestock, Economic Opportunity, Rural Housing for farm service buildings. and/or Recreation loan(s), apply for servicing options, including deferrals, that are explained in the enclosed Form FmHA 1924-14, "Notice-Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities." Please read this form carefully.

If you wish to apply for any of the servicing options you must complete Part I of the enclosed Form FmHA 1924-26, sign the form, and return the form to the address listed on the letterhead of this notice within 30 days after you receive this notice. We will then arrange a conference with you to develop financial statements and farm operating plans which FmHA will use to make a determination on your request for servicing options. If you fail to attend this conference without offering a legitimate excuse or if you fail to provide necessary information, your request will be automatically denied and you will not be given an opportunity to appeal any adverse decision.

At the conference you will be given the opportunity to present information you believe will show you are eligible for the servicing option(s) you requested. FmHA will make a decision on your request based on the information submitted by you, the information in your FmHA case file and the plans developed by you and FmHA at the conference. Such a decision will be in writing and, if the decision is adverse. FmHA will explain how to appeal the decision and to have an appeal hearing. Such a hearing will cover both the denial of your request for servicing alternatives and other adverse actions FmHA intends to take against you as indicated above.

If you do not wish to request servicing options, you have the opportunity to appeal the adverse action(s) FmHA intends to take. In this case, you should complete only Part II of Form FmHA 1924-26, sign the form and return it to the address shown in the letterhead of this notice within 30 days after you receive this notice. You may appear in person, with or without an attorney or other representative, to present your information. The hearing officer will be an FmHA employee who has not been previously involved in your case. The hearing officer will arrange a mutually convenient time and place for the appeal hearing.

Several methods of curing defaults or liquidating your FmHA loan accounts are available. If you prefer to use one of those methods listed in Part III (Curing Defaults) or Part IV (Liquidation Action) of Form FmHA 1924-26, check the appropriate box, sign the form and return it to the address listed in the letterhead of this notice within 30 days of receipt of this notice.

Please note that Form FmHA 1924-26 must be postmarked within 30 days of the day you received this notice. If you fail to respond to this notice by completing, signing and returning Form FmHA 1924-26 in the prescribed time, FmHA reserves the right to accelerate your FmHA debts or foreclose on your real estate and/or chattels without further notice or right of administrative appeal by you.

*(The following paragraph applies for individual borrowers only)*

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age *(provided that the applicant has the capacity to enter into a binding contract)*; because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely

FmHA County Supervisor

Enclosures:
Form FmHA 1924-14
Form FmHA 1924-26

*Position 4*

FORM APPROVED
OMB NO. 0575-0111
EXP. DATE AVAIL. ON REQUEST

United States Department of Agriculture
Farmers Home Administration

Form FmHA 1924-26
(1-86)
Borrower Acknowledgement of
Notice of Intent to Take
Adverse Action

DRAFT
1/21/86

______________________
*(Date)*

County Supervisor, FmHA

This acknowledges that I(we) received your Notice of Intent To Take Adverse Action dated ______________.

(Complete Part I, II, III, or Part IV and Part V)

---

I. Servicing Actions

I(we) request FmHA to consider the following servicing actions (check one or more)

A. ______ Rescheduling
B. ______ Reamortization
C. ______ Consolidation
D. ______ Deferral
E. ______ Limited Resource
F. ______ Subordination
G. ______ Restructuring the business and debt by selling a portion of my(our) asset.

I(we) understand that if, after I(we) attend a mandatory conference and present necessary information, FmHA denies my (our) request, I (we) will be given opportunity to appeal.

(If you completed this part, proceed to Part V)

---

II. Appeal

I (we) do not wish to apply for the servicing options in Part I above. I (we) understand that I (we) may appeal FmHA's intended adverse action and I (we) wish to have the appeal hearing handled as follows:

(check appropriate box)

A. ______ I(we) request an appeal hearing and I(we) believe FmHA's intended action is wrong for the following reason(s).

I(we) am(are) enclosing the following information for the hearing officer's consideration (Itemize specific documents).

B. ______ I(we) request an appeal hearing and I(we) will present information at the hearing which I(we) believe will prove FmHA's decision is incorrect.

______________

This information is to be collected by FmHA from the borrower in order to learn whether the borrower wants to apply for specific loan servicing options, to appeal FmHA's intended actions, to cure the default or to liquidate. The information is required so that FmHA understands what actions the borrower wishes to pursue. This statment is furnished pursuant to P.L. 96-511.

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C. ______ I(we) will not attend an appeal hearing but request the hearing officer to review the existing written record, and based on the review, determine whether FmHA's decision is correct.

D. ______ I(we) do not want to appeal the intended action and waive my(our) right to do so.

(If you completed this part, proceed to Part V)

III. Curing Defaults. *(Complete this only if you have checked none of the boxes in I or II above).*

I(we) do not wish to request a servicing option in Part I or to appeal the intended adverse action as allowed in Part II. I(we) wish to take the following action to correct the security agreement violations noted in Form FmHA 1924-25 and request a conference with you to discuss this action.

A. ______ Pay my(our) delinquent loan accounts current.

B. ______ Make restitution to FmHA for unauthorized disposition of security.

I will take this action within 60 days of the date this Form FmHA 1924-26 is postmarked. If I cannot accomplish this action within the 60 days, FmHA will proceed to take adverse action against me, and I will not be allowed to appeal the adverse action.

(If you completed this part, proceed to Part V)

IV. Liquidation Actions. *(Complete this only if you have checked none of the boxes in I, II, or III above).*

I(we) do not wish to request a servicing option in Part I, appeal the adverse action as permitted in Part II, or correct the security agreement violations as permitted in Part III. I(we) wish to take the following action to liquidate my (our) FmHA accounts and request a conference with you to discuss this action.

A. ______ Sell my (our) security for cash.

B. ______ Convey my (our) security to FmHA.

C. ______ Transfer my (our) security to someone who will assume the FmHA debt.

D. ______ Refinance my (our) debt with another lender.

I(we) wish to be considered for dwelling retention rights. *(Check appropriate box)* ☐ Yes ☐ No

I will take this action within 120 days of the date this Form FmHA 1924-26 is postmarked. I understand that I may be considered for FmHA debt settlement should sale, transfer, or conveyance of secured property fail to satisfy my(our) entire FmHA debt. I understand that if I cannot accomplish this action within 120 days, FmHA will proceed to take adverse action and I will not be allowed to appeal that action.

(Proceed to Part V)

V. Certification

I(we) hereby request one of the above actions. I(we) understand that if I(we) do not request any of the actions in Parts I, III, or IV or desire an appeal hearing in Part II, FmHA may proceed to take immediate action on my(our) loan accounts.

Sincerely,

______________________________
*(Signature of borrower)*

[ATTACHMENT B]

Dear Borrower:

This letter is extremely important to you since it concerns your loan with the Farmers Home Administration.

Our records indicate that your loan(s) with us were in default on December 31, 1985. This situation requires your immediate attention.

These are of course difficult times in agriculture and you now need to make some tough decisions as to your future. The status of your loan(s) with us makes your decisions even more difficult. We are enclosing Form FmHA 1924-14, (Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities), which describes the options that may provide relief to your financial difficulty.

Please contact us within 30 days for an appointment so that we may meet with you and advise you as to what relief, if any, we may be able to offer. Our phone number and address is as follows:

________________
________________
________________
________________

Sincerely,

County Supervisor

FmHA 1924-14
(Rev. 1-86)

*Position 3*

DRAFT
1/21/86

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

## NOTICE

## FARMER PROGRAM BORROWER SERVICING OPTIONS INCLUDING DEFERRALS AND BORROWER RESPONSIBILITIES

### Servicing Options

All borrowers are expected to repay their loans according to planned repayment schedules. However, sometimes borrowers will not be able to pay as scheduled. If this happens, you may inquire about the following servicing options:

I. Deferral:

An approved delay in making regularly scheduled payments. Such a delay may be granted if FmHA finds that, due to circumstances beyond your control, you are temporarily unable to continue making the scheduled payments on such loan(s) without unduly impairing your standard of living. A more detailed description is available at any FmHA Office.

II. Limited Resource Program:

The Farmers Home Administration (FmHA) has authority to make limited resource farm ownership and operating loans to qualified applicants.

The program provides credit at an interest rate which is lower than FmHA's regular interest rate.

In addition to making loans at reduced interest rate, borrowers with existing farm ownership and operating loans who qualify as limited resource operators may have their loans rewritten at the lower interest rate.

III. Consolidation:

Combining and rewriting similar type loans made for operating purposes at new rates and terms.

IV. Rescheduling:

Rewriting loans made for operating purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

V. Reamortization:

Rewriting loans made for real estate purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

VI. Subordination of the FmHA lien to the lien of another creditor.

VII. Restructuring the business and debt by selling a portion of your assets.

If you would like additional information regarding any of the above items and how to apply you should contact the FmHA County Supervisor. You will be asked to attend a conference with the FmHA County Supervisor and you must furnish the information necessary for FmHA to make a decision on your request. The County Supervisor can advise you of the information needed for a decision.

## FARMER PROGRAM BORROWER RESPONSIBILITIES

Please read carefully the following summary of major FmHA requirements. Farmer Program insured borrowers should understand what the Farmers Home Administration (FmHA) expects of them and how FmHA can be of better service. This is *not* a complete list of all responsibilities of an FmHA borrower; this highlights only *some* of those responsibilities.

RESPONSIBILITIES CONSIST OF, BUT ARE NOT LIMITED TO, THE FOLLOWING:

| | |
|---|---|
| PAYMENTS: | Payments are due as agreed upon in the note(s). It is essential that payments be made on time. Extra payments are encouraged whenever possible. |
| SECURITY: | The loan(s) is secured by a Financing Statement and Security Agreement and/or a real estate mortgage or other security instruments (depending upon the type of loan or security). These instruments give FmHA a valid lien on crops, chattels, land, etc., as applicable. |
| USE OF LOAN FUNDS: | FmHA loan funds will be used for the purpose(s) shown on the Farm and Home Plan or other plan of operation acceptable to FmHA, and/or Development Plan in cases of real estate improvements. |
| RELEASES AND SALES: | The Form FmHA 1962-1, "Agreement For The Use of Proceeds/Release of Chattel Security," which you signed is the agreement between FmHA and you which explains what sales you plan to make, approximately when and to whom those sales will be made, and how the proceeds from those sales will be used. You must inform FmHA if you want to make any sales which are not listed on the form, if you want to sell to a purchaser not listed on the form, or if you make a sale and you receive an amount of proceeds different from the amount listed on the form. It may be a violation of Federal criminal law to make sales which have not been authorized on Form FmHA 1962-1 or to fail to account for sales proceeds. |
| CHANGES IN OPERATION: | FmHA agreed to lend you money based on facts which you supplied about your operation. If any changes occur in your operation you should notify the FmHA County Supervisor at once. |
| RECORDKEEPING: | You must select and maintain a recordkeeping system which adequately meets the needs of your farming operation and which provides, as a minimum, a record of the annual cash flow, beginning and end of the year balance sheets, and an income statement. Recordkeeping systems may include the farm record book available through FmHA (Form FmHA 432-1, "Farm Family Record Book"), other record books, or a suitable system offered by a farm management service, State Extension Service, or commercial record keeping or accounting service, which is acceptable to FmHA. If you receive emergency loans of $100,000 or more, you are required to use a recordkeeping system or accounting service which provides, as a minimum, a monthly cash flow statement, a change in financial position statement, beginning and end of year balance sheets, and an income statement. EM borrowers are encouraged to use a computer recordkeeping system when available.<br>(Costs for training farmer program borrowers, particularly limited resource borrowers, in recordkeeping for farm and ranching operations are an authorized loan purpose in accordance with Section 1941.16(1) of FmHA Instruction 1941-A.) |
| VIOLATION OF RESPONSIBILITIES: | Violation of any of the above responsibilities may result in denial of further FmHA assistance, and could cause your FmHA loan(s) to be accelerated.<br>If the violation results in your FmHA loan(s) to be accelerated, you may have the opportunity to retain possession of the principal residence. Options available are (a) refinancing with another lender, (b) assumption on ineligible rates and terms, (c) lease from the Government for not less than three nor more than five years with an option to reacquire the property after the leasing period. |

## BRIEF SUMMARY OF FMHA SERVICING REGULATIONS PROCEDURES

FmHA servicing regulations were developed to give FmHA borrowers with delinquent and problem loans clear and consistent guidelines on how their accounts will be serviced by the agency. The regulations, "Special Supervision of Delinquent and Problem Case FmHA Farm Borrowers," were issued as a proposed rule in the Federal Register November 30, 1984 with a 60 day comment period. The final rule was issued November 1, 1985.

The regulations spell out the various servicing alternatives which may be considered to try to bring loans current. They are: 1) deferrals; 2) low interest limited resource loans; 3) consolidation; 4) rescheduling; 5) reamortization; 6) subordination; and 7) restructuring by selling a portion of assets. Only after it is shown that none of the alternatives will succeed in bringing accounts current will the agency begin to consider further action.

Historically, the lowest delinqency rate occurs on December 31 each year since most annual loan payments are due on January 1. Approximately 65,000 FmHA borrowers were delinquent as of Dec. 31, 1985. FmHA is currently determining how many of those borrowers have made no payments for three or more years, and how many have failed to properly account for security property.

All FmHA borrowers who have made no payments for three or more years as of December 31, 1985, or who have failed to properly account for security property, will be sent by registered mail a notice of "Intent to Take Adverse Action." It will cite the specific problem with the borrower's account and require the borrower to respond within 30 days . The mailing will also include a complete description of the seven servicing alternatives and a reply form on which to indicate the servicing action the borrower wants to be considered.

When the borrower's response is received, an appointment is set up to review the borrower's financial condition. If one of the servicing options is approved, the notice to take adverse action is terminated. If the borrower fails to respond within 30 days, FmHA will proceed to collect the account. Failure to respond within 30 days also forfeits any appeal rights.

Borrowers who are less than three years delinquent will receive a registered letter asking them to contact the county office within 30 days to make an appointment to try to work out their loan problems. The same seven servicing options will be available to them. Those who do not respond will eventually be sent the "Intent to Take Adverse Action" notice.

If, after a borrower in either situation has responded and met with the county supervisor, a favorable decison cannot be reached, the borrower may appeal the adverse decision. During the appeals process, FmHA will honor agreements concerning the release of funds from the sale of securities.

During FY 1985, FmHA helped 168,200 borrowers reach a cash-flow position through special credit assistance such as deferrals, reschedulings, etc.

January 1986

### NEWEST FORM LETTER

Senator COCHRAN. In looking at these new forms, which I may say, are more sensitive, without a doubt, to some special needs that exist out in the farming community, I wonder whether or not the practical result is going to be an inundation of our county supervisors with requests from borrowers for deferrals or for limited resource program loans that are described in these instructions.

My specific question is: Under the sequester order that is being developed right now by OMB and the administration to reduce spending by $11.7 billion to comply with the terms of Gramm-Rudman by March 1, will there be a diminution in the personnel levels among the agencies to the extent that it will be impossible to process these requests for information?

### FMHA STAFF RESOURCES

Mr. NAYLOR. Mr. Chairman, we are still in the process of evaluating the sequester order. As I am sure those members of your committee who are also on the Agriculture Committee will recall, there is a provision in the farm bill that directs us to provide adequate staff for the farm-lending season and to utilize revolving funds for that purpose, which clearly would provide the necessary funding to do so.

However, and we are still working with counsel in determining the current requirement, if we do use revolving funds, we must come up with an offset from some other part of the Agency operation.

So while we are providing for the full level of services, if indeed that is the case, I think it only fair to advise the committee that it may be necessary later in the year after the lending season in some other area of Agency operation to make the necessary offsets so that we can meet the requirement which you have placed on us in that farm bill.

### FMHA DEFERRAL POLICY

Senator COCHRAN. I wonder too, in connection with the options that are available to delinquent borrowers to be able to receive help, whether or not each borrower is going to stop when he gets to the option of deferral and decide, "Hey, this is for me. That's what I want." Because reading this description of the options, it's the most attractive one available. It says, basically, that a deferral is, "an approved delay in making regularly scheduled payments. Such a delay may be granted if the Farmers Home Administration finds that, due to circumstances beyond your control, you are temporarily unable to continue making scheduled payments on such loans without unduly impairing your standard of living."

Having read that, the farmer is going to say, "That's me! I pick that!" So it says that he is to get a more detailed description from his Farmers Home Administration Office.

Think about this. There are 13,000 Farmers Home Administration borrowers in my State of Mississippi. Forty percent are delinquent. So we're talking about 6,000 or so farmers who will be getting, as I understand it, these options that are available to them. Everyone of them is going to stop when they get to the deferral description and go no further. They're going to call the office or they're going to go down there to see if they qualify for this.

The other day, there was a briefing up here on the Hill. My staff was there along with the staffs of other Senators and they were reporting back to me that there was no definition yet developed of how deferrals were determined by the Agency.

Now, if these notices go out, these options go out, and the Farmers Home County Supervisor is there trying to deal with these questions and these visitors—6,000, at least, in number—and he doesn't have a definition of eligibility, how is he going to answer the questions? And what is the reaction of the individual farmer going to be when he asks them to check to see if he is eligible, and says, "I want to know and you can't tell me what's going on." So they call me, or Senator Mattingly. In his State, they say, 53 percent of the borrowers are delinquent according to the newspaper account. In Louisiana, it's 40 percent of their borrowers. In Alabama, it's 21 percent.

I don't know the percent in the other States, but I know that in the neighboring States in my region, we have a very high percentage of delinquencies. If this is going to be true in every State, I can just imagine how we're going to see, right here at lending season, the processing of loans come to a grinding halt unless we have a very clear definition of eligibility for deferral and unless this is well understood by county office employees. They are on the ground level where the action really is. The farmers are going to need to be able to understand this so that it's not so complicated that it would take a Los Angeles banker to figure it out. We don't want to get too complicated. Make it very, very clear. This is a concern. What is your reaction to that?

Mr. CLARK. Well, I'm a California banker, but not from Los Angeles, but it doesn't take that to get involved with an analysis.

There are guidelines in the bill. We have spent hours upon hours training our people to get ready for this. I would remind you that last year we also had a deferral program.

We also put in the field in the last few days data and statistics from our Economic Research Section that allows our lending officers to sit down and analyze borrowers' land for the next 5 years. It's a 5-year deferral. So he needs the plan for the 5-year period to see what his commodity flow and cash-flow will be for 5 years and to see whether or not he, indeed, will qualify and be able to then again assume payments on that deferred debt at the end of that period.

So, there is data in the field, there are a lot of people in the field familiar with this, Senator, and I think we are ready to do that.

Obviously, they're going to be pounding on our doors in great numbers, but that's no different than last year. We're going to have to carefully shepherd our resources in the field and we're doing some things, I think, strategically to switch personnel from area to area or to a critical area, where we will beef it up and take from other areas that are less busy.

So we're trying to do some businesslike things to meet this challenge.

Senator COCHRAN. Senator Burdick.

Senator BURDICK. Thank you, Mr. Chairman.

When you sent out the notices of intent to take adverse action, or intended to send them out, it hit the State of North Dakota like a bombshell. Here you are a farmer having difficulty getting along, and you get this notice from the Government—adverse action. If you read the small print, he finds foreclosure too. He finds all of that and you know there's a lot going on in Bismarck right now to test whether or not that notice was legal and proper. I guess the case has been concluded, but the decision hasn't been made yet.

But you can understand that if our farmers weren't under stress before, they'll now be under stress when they think what that means.

Wouldn't it be better, Mr. Secretary and Mr. Administrator, to look at the buy-down provision of the new farm bill and see if there isn't some way we can get a remedy here rather than to be talking about foreclosure?

### INTEREST BUY-DOWN PROGRAM

Mr. NAYLOR. Senator, you touched on a couple of subjects. Let me take your last question first.

With regard to the interest rate buy-down provided for in the latest farm bill we, indeed, do intend to very promptly publish regulations with regard to that and making that available throughout the country, as it applies to the Farmers Home Administration guaranteed lending programs to commercial bankers and, therefore, the Farm Credit System. The regulations will provide that where a bank will make a 2-percent—or up to a 2-percent—concession, the Government will match that.

I think that that will be a very valuable tool and we fully intend to use this extensively. I think it will be particularly useful in your own area. Indeed, at the Midwest Governors Conference, your State banking people approached us to see if the program in your own State might be coordinated with that in some respect. We would be more than willing to work with your State to try and accomplish that same setting. It's a useful tool.

With regard to your first question, I would simply reiterate my frustration and concerns of the past that it is the requirement of any government to fully inform the citizens of its rights and procedures in anything that might lead to an adverse action at some point in the future, no matter how far in the future it may be, as a result of court cases. A court case has been initiated in your State which puts a responsibility on us, at the outset, the first instance in the lending season, to tell an individual in writing everything they can do to remedy that problem and what would happen if it isn't remedied, no matter how many years in the future it may be.

To cast that after it's been viewed as a foreclosure notice and raise the spector of fear in producers and to choose to interpret that as a

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major change in policy, as some individuals and groups have done—and I entered into some of these discussions earlier this week with an individual involved in this case—I would have to say to you, Senator, frankly, in my view, it's the height of irresponsibility on their part.

They know and knew and still know today, there has been no change in the policy of this administration for forebearance, no change in this administration wanting to work with farmers, and I would proudly take the record that has been substantiated by the inspector general and General Accounting Office, that that indeed has been our practice, if anything, to the extreme.

Senator BURDICK. I am more than a little aware of the intense feeling out there in the farm communities having difficulties making money and keeping your family together, and I still contend this proposed letter is more or less of a bombshell. No question about that.

How fast can you get some regulations out on the buy-down?

Mr. CLARK. We are now working about 20 people, 10 hours a day, to get that in the Federal Register. We hope to have it published around the middle of February, so we are pushing forward on that as rapidly as possible.

We do see those unique measures in the farm bill that can be plugged into the field to make them more viable, even transitional, for some of our farmers if they're going to leave the farm, but there are provisions in the bill for some relief to our people.

Mr. NAYLOR. Senator, if I might add to that. It is our intent, on all these regulations, where we have options, to be more helpful to producers and assist them. We will publish those in an emergency regulatory form so they can be put into place and utilized before the end of the lending season so as to be applicable as near to a full season as possible and to give our commercial bankers sufficient time to participate in the program.

Senator HARKIN. Senator Burdick, would you yield?

Senator BURDICK. On your time.

Senator HARKIN. Thank you.

In other words, you're going to propose interim regulations rather than proposed regulations?

Mr. NAYLOR. Senator Harkin, what you call emergency regulations would permit us to go ahead and utilize them and then have a comment period after.

Senator HARKIN. That's the interim regulation?

Mr. NAYLOR. Right.

Senator HARKIN. Thank you.

Senator BURDICK. As you know, the notice of intent to take adverse action is the subject of the trial in Bismarck this week and I know statements made by the administration have indicated that you intend to go ahead with these notices regardless of the outcome of that trial. Is that correct?

Mr. CLARK. That's correct. We will go ahead if the court permits.

Senator BURDICK. You're going to ignore the ruling of the court?

Mr. CLARK. There's no ruling yet.

Senator BURDICK. Suppose the ruling is adverse?

Mr. CLARK. We'll comply with the law, Senator.

Senator BURDICK. That's better. I am pleased to know that you are going to take immediate steps to implement the buy-down provision, because I think that is going to bring satisfactory results relating to these scheduled foreclosures that are hanging over the farmers there.

Senator COCHRAN. Thank you. Senator Andrews.

### LOANS FOR SURPLUS COMMODITIES

Senator ANDREWS. Thank you, Mr. Chairman.

Mr. Naylor, you pointed out that we could help by dispelling the wrong impressions out there. I mentioned the December 2 inserts in the Federal Register. My colleague, Senator Boren, expressed his concern about that too.

I understand that Mr. Clark, who came up to my office last week, will make a Federal Register revision that goes something like this: The Administrator may cut off Farmers Home Administration loans to those individuals who are expanding their production of surplus commodities.

Now this is definitive. This is something that you can speak to right now so that the general public knows and you can dispell that for them.

Mr. NAYLOR. Senator, you're absolutely correct and that's an absolutely accurate description of the end purpose and thrust of that regulation. I would be the first to admit that I was embarrassed myself by the way that was placed in the Federal Register publication as a regulation for comment; it clearly could have been misinterpreted and was.

As for the purpose, you have correctly put it in its proper context and those adjustments will be effective in the near future.

Senator ANDREWS. And they will be published in the Federal Register within the next few weeks?

Mr. NAYLOR. Yes; that is correct.

### LOANS TO NEW BORROWERS

Senator ANDREWS. I have another question. There have been rumors floating around rural America that you have said that the Farmers Home Administration, even though it is the lender of last resort, will not accept any new borrowers this year. Is that operative or inoperative?

Mr. NAYLOR. No; it is not operative, Senator. I think that concern raised around our hope that we could increasingly encourage new borrowers—and we still think this proposal is meritorious—to enter the Farmers Home program through their commercial lenders, utilizing our guarantee program as their initial point of contact. Normally seed borrowers come from the commercial lender to the Farm Credit System that says I can't lend you anymore. We think they could if they would use our guarantee program, and that, in the first instance, would be why they would contact us.

If they can't obtain a loan from that source, certainly our direct program remains available to them and that should be kept in that perspective.

Senator ANDREWS. Mr. Secretary, in the interest of candor, or laying it on the table, as you know, there is this court problem going on in North Dakota. The testimony has just concluded.

But, during that court trial, the USDA refused to make available to the court or the plaintiff the revised letter you intend to send out, the revised letter that you have just now made available to this committee. Did you make it available to the court? They begin to wonder about what sort of dark mirrors you're operating behind when you do these kinds of things, and since you called for candor and I totally agree with that, old friend, I just want to find out how come and have you now provided the court with the revised letter?

Mr. NAYLOR. Senator, I am not a part of the Justice Department, and it would be improper for me to speculate or even comment on how that case was specifically handled.

Senator ANDREWS. So we can blame that one on Meese and not Naylor.

Mr. NAYLOR. I think that the issue is that again there has been a substantial misunderstanding by the public. The issue in court is whether or not the regulatory process, the notification, the rights of the borrower, is the procedure that the borrower has the right to know, on a uniform basis, how his case will be handled if he has a problem with us.

It isn't a question of whether or not we have crossed the "t" or dotted the "i's," whether they want a change in the wording on one part of the regulation or another, whether there will be a moratorium or a change or a shutdown, as many in the press have asserted, or whether or not the way we revoke and propose a particular regulation needs to be changed in some sentence or some form.

Anyone can bring that course of action to any court at anytime, now or in the future. We can be faced with any number of challenges by any number of individuals.

Senator ANDREWS. But Mr. Naylor, this letter, that we now have in our hands, the hard letter and the soft letter are now, in your terms, operational?

Mr. NAYLOR. That's correct.

Senator ANDREWS. And if I were to pass these letters on to the plaintiff, to the court, that other agency, the Justice Department would not indict me for doing that?

Mr. NAYLOR. I would not really think so and I am quite sure we fully expect these to be widely disseminated.

Senator ANDREWS. Now, in line with what our chairman has asked and I read this myself, I see that deferral and I think "hallelujah," you know, we got it, but the Farmers Home giveth and then the Farmers Home taketh away because in the same paragraph, you say, "A more detailed description is available at any Farmer's Home Office." Now that "more detailed description," I suggest, might well contain the clinkers so that what we like to read in the first couple of sentences becomes nonoperational.

Now, have you established criteria for granting these loan deferrals?

Mr. CLARK. I would hate to stifle the creativeness of our county supervisors out there.

Senator ANDREWS. I am concerned about that creativeness, because that creativeness is the thing that's giving farmers shellshock today.

Mr. CLARK. It's worked to the benefit of American farmers for years, and I think you'll find that creativeness in any lending officer in any lending institution. They need to be able to see if they can make it work. I think we're in trouble if we stifle them with a lot of regulations and ratios.

Senator ANDREWS. Don't you think it would be wise to find some baseline beyond which they can't go and let them be creative on the farmers' side instead of on the money lender's side?

Mr. CLARK. Senator, they have those baselines, as you call them, and we have spent hours in training them along those lines.

Senator ANDREWS. But you're not including the criteria for granting loan deferrals in these notices that are going out?

Mr. CLARK. No; we're not. I think we would wind up with a paperback book if we started putting everything in those notices. There's got to be some real nose-to-nose discussions and negotiations and you need that flexibility in those situations.

Senator ANDREWS. Let me get back to what I asked in the first place in my introductory remarks—the thing I am appalled at. Was it a national policy to order those local offices to take crop loans on 1986 crops when the farmers came in to get their 1985 living expenses?

Mr. CLARK. I am not familiar with that at all. Since you have raised the question, I am going to ask. Maybe they have been a little creative, as you say. I don't understand it.

Senator ANDREWS. Maybe they have been too creative. Are you aware that this happened?

Mr. CLARK. No; I am not. Incidentally, are you aware, one of those options is a subordination agreement? Indeed, if we had done what you have told me, there is no reason we will not subordinate our position to another lender. He's under the guaranteed loan program or the PCA. I think that has to be considered as well.

Senator ANDREWS. Let me again point out, you understand the difficulty of the situation. This is an indictable offense, if it were done by a bank in the State of North Dakota. Now, are you telling this committee that if you find that your local lending offices took liens on 1986 crops before disbursing living expenses for 1985 crops and then refused to make an operating loan for 1986 crops, you will go after them?

Mr. CLARK. Certainly, if that is an offense that is indictable. I would like a name, if you will, please.

Senator ANDREWS. We'll provide those to you. You're assuring this committee that you're directing these local creativity agents to abide by the State laws that would inhibit that kind of creativity if they were a local banker?

Mr. CLARK. Certainly. We're not going to do anything illegal.

Senator ANDREWS. We appreciate that. Have you established criteria for living expenses under the old regulations where Farmers Home was required to give first priority to releasing income for living and farm operating expenses? Your new regulations eliminate this priority and stipulate that the priority should be determined by the borrower and the supervisor during the Farmers Home planning processes. What criteria do you have for that?

You don't foreclose on a farm by roundabout methods of denying the farm family groceries?

Mr. CLARK. The priorities you're addressing are contained in the plan of financing down the line. Under the guidelines, you need to cover these items as you plan for next year. The operation has to cover these items. One of them is normal living expenses. It's not prioritized that the funds will go last to that.

Senator ANDREWS. Will you provide for the record, at this point, a fuller explanation of that criteria?

Mr. CLARK. Happy to.

[The information follows:]

Existing FmHA regulations require the County Supervisor and the borrower to jointly develop a plan, form FmHA 1962-1 "Agreement for Use of Proceeds/Release of Chattel Security," for the use of expected income during the year. Although the regulations outline acceptable purposes for release of proceeds, there is no set priority for any particular use of the income. This is to be worked out between the borrower and the County Supervisor, based upon the borrower's individual situation. If an agreement cannot be reached, the District Director is to develop the plan. Once the plan is developed, FmHA must release the income for purposes specified in the plan.

To avoid any misunderstanding by FmHA field personnel, a memorandum was sent on December 12, 1985, to clearly specify that income must be released for family living needs. FmHA certainly has no intention of denying borrowers funds for basic family necessities.

Senator ANDREWS. And then finally, because my other colleagues have some questions, I am going to submit some for the record.

### COMMUNITY INVOLVEMENT

I would like your response to the fact that your regulations require farmers to seek debt adjustment with local merchants before they could be eligible to seek a deferral. That means that the farmer has to go into his John Deere International dealer. He has to go into his local hardware store. He has to go into his local elevator and say, "Hey, will you forgive me for some of my loan or will you forego it for awhile?"

These local smalltown merchants, I submit, Mr. Secretary, are in just as difficult a situation as the farmers are in.

If your criteria demands this, you're going to sink the whole community. Why are you doing this? Do we have to? Do you feel it is incumbent on Farmers Home to drag down the seed and machinery and fertilizer businesses too?

## ALL LENDERS SHOULD WORK TOGETHER

Mr. Naylor. Senator, I don't think, by any stretch of the imagination, that that is the intent, but I think you also recognize that in the lending business we work with all of them, including those dealers. If we're going to help the farmer through, we've got to provide him some relief, and in some cases it is necessary, even preferable, for that dealer to stand down or stand aside or work with the rest of the lenders involved so that operator can survive.

Senator Andrews. But if Farmers Home sets itself up as God and tells that farmer that you've got to go around to your community hardware store, your community elevator, your local fertilizer dealer and get a 30-percent writeoff of last year's bill or we're going to put you out of farming. That's what you've done if you impose a load on that community, that either they try to protect that farmer, in which case they lose some of their own protection or that farmer goes down the drain. It weakens the whole community.

If banks did that, they would be laughed out of the city.

Mr. Naylor. Senator, banks routinely are doing that all across the country. It's a standard lending practice in this entire country today and particularly in the agricultural community where the lenders, including the dealers, are routinely sitting down and saying, "Here's an operator who is deserving of staying in business, but we have got to get his debt service and his expense total down so that he has the opportunity to survive, and that means that all of us are going to have to make some kind of concession to accomplish that."

Senator Andrews. You're putting this as an arbitrary criteria and then that fertilizer dealer or local co-op elevator has to get more out of their other customers who are also farmers in order to just survive.

I would hope that you would reexamine that and provide a little bit more information for the record on that.

Mr. Chairman, I have a number of questions, but time is limited and I will submit them for the record. Once again, thank you for holding this hearing.

We'll get into a lot more of this when we have a regular hearing and we have adequate time.

So just remember, we're looking over your shoulder. We're very much concerned and we want to help you help us in expressing that candor that you told us was so important for farm communities and to Americans in general, so we'll help you, if we can, Mr. Secretary, and we're looking forward to the next time you're up here in about a month or so.

Senator Cochran. Thank you, Senator. Senator Stennis.

Senator Stennis. Mr. Chairman, we're getting some good variety here this morning, and I think it is helpful.

I wanted to make an observation this morning. I'm a former trial judge myself, you know, and in law suits in which I have participated it takes getting close together to work out a form of settlement.

Time has run out as I see it for many farmers, and I hope we can lay aside some things and get something permanent and better than the temporary settlement that we have now. I pass.

Senator COCHRAN. Thank you, Senator. Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you. Again, I appreciate your calling this hearing. I must say, very frankly, that the administration is being perceived in Wisconsin as being insensitive to the farm credit crisis and to its implications for rural America. I hope that today we're able to do something about that.

I join the chairman and the other Senators on this committee in saying that we must do something about it.

I would like to try to be very specific as to what is going to happen to farmers who get a notice to come in and discuss their loan problems with the FmHA. These aren't the people who are going to get the notice of intent to take adverse action. Those are only going to be the people who are more than 3 years delinquent.

What will happen to those farmers who are less than 3 years delinquent if they fail to respond or they are unable to respond within 30 days of the first letter? How long will it before they get a notice of intent to take adverse action?

### LETTER OF INTENT

Mr. NAYLOR. Senator, we would expect that by and large all, or a high percentage, of those who receive letters will come in because it's important that they do get in as quickly as possible. They need to make their plans and know where they stand. It's equally important they know where they stand for the coming year.

If a borrower totally ignores that notice and does nothing to let us sit down and try to work it out, only then will they receive the second notice.

Senator KASTEN. Will the second notice be a notice of intent to take adverse action or will the second notice simply be a notice saying we sent you a notice and you have to come in and talk to us?

Mr. CLARK. If I understand correctly, it will be the second letter.

Senator KASTEN. Will it be the notice of intent?

Mr. CLARK. We still must go through the options before we would do anything.

Senator KASTEN. Now, for those borrowers in the other category, those who are more than 3 years delinquent, how soon after the 30 days are up will the FmHA be authorized to begin foreclosure proceedings? Is foreclosure the only option under these cases?

I understand that in Wisconsin we're talking about anywhere from 1,200 people, and about only one-third of those are over 3 years delinquent.

Mr. NAYLOR. First of all, it's not the only option. The borrower would still have the right to appeal that decision.

It would depend on the individual case basis and the situation that exists. Our hope is that, before we would move to an action that might lead to foreclosure, the borrower will come in and allow us to work with him to go through the series of 7 options that might take care of the debt problem he's dealing with.

If a situation exists where the borrower absolutely refuses to communicate or to do anything, without any effort whatsoever—and keep in mind we're talking about borrowers who haven't paid anything on the loan for 3 or more years or are under suspicion of defrauding the Government—even after that, we will still attempt to exhaust the alternative remedies; and only if they refuse will we then have no choice but to move to take some formal action which will lead to foreclosure.

Senator KASTEN. So you're telling us that, No. 1: foreclosure is not the only option, and No. 2: you've got these other 7 steps—and even for people in these extreme circumstances, you are telling us that you're going to work with them to the degree that you can?

Mr. NAYLOR. Absolutely, and I think the record of the Farmers Home Administration speaks for itself, instead of those who would like to lead us to hysteria. I ask you to look in the published report, the record established through the inspector general and the General Accounting Office. We have a long and very sound record of doing precisely that and have been doing it for the last 4 years.

Senator KASTEN. Well, I hope that we are making progress here, and I appreciate your comments. Right now some people in Wisconsin don't think they have these options. If, in fact, this is the way this is going to be administered, with the oversight of this subcommittee, I think that we can begin to see the kinds of results that our farmers want and need.

So, as the Senator from North Dakota said, we're going to be looking over your shoulder, but at the same time, we want to work with you toward the goal of keeping viable farmers on the land.

### PRIVATE DEBT COLLECTION AGENCIES

I want to change the subject a little bit.

There are a number of active FmHA borrowers that are delinquent. It's clear that there are some management problems at the FmHA. I believe that the Federal management problems could adversely affect the roughly 1.5 million legitimate, active borrowers the Agency now serves. I simply want to urge that the South Carolina and Pennsylvania private sector projects be reinstated in order to enable FmHA to evaluate the potential of private sector debt collection. I want you to keep us informed of your efforts in this regard as we look at the alternatives to the present system of management of FmHA borrowing.

Mr. NAYLOR. I would be delighted to do that, Senator.

Senator COCHRAN. Thank you, Senator.

I have asked Senator Mattingly to assume the responsibility of the Chair. In view of a previous commitment, I have to leave at 11 o'clock.

We will now continue the round of questioning by the members of the committee and those who are here, and we will continue this hearing so there can be some questions asked by everyone.

I would hope that the Senators would cooperate with Senator Mattingly and ensure that everyone who wants to, who has questions, gets to do so.

Anyone who does have questions and is unable to ask them, we can submit those, and we ask that they be answered in writing for the record.

I want to thank you both for cooperating with us and being here today. I appreciate it very much.

### PREPARED STATEMENT

Senator BUMPERS. I may have to leave a little before 11:15. I hope to be back shortly thereafter. In case I am not, I ask unanimous consent for the letter I sent to Secretary Block on January 10, 1986, plus my statement, be be inserted in the record.

Senator COCHRAN. Without objection, it will be placed in the record at this point.

[The statement and letter follow:]

## STATEMENT OF SENATOR BUMPERS

Mr. Chairman, I am very glad we have this opportunity today to address a recent development within the Farmers Home Administration (FmHA). Since I learned of the agency's decision to implement this new loan servicing program in the very near future, I have been greatly troubled by the serious, even devastating, effect which this sudden policy change could have on countless farmers in my state and throughout our nation.

I certainly believe we have a need to do everything we can to assist Farmers Home Administration borrowers who have been delinquent in their loans so that they may become current. I'm sure all such farmers would welcome the opportunity to have their financial situation improved. However, I also fully believe that the rapid implementation of this new servicing program is not the proper way to solve the problem.

I understand that the policy has been modified somewhat since it was first announced, so that now, only those who have been delinquent for more than three years or who have not properly accounted for security property will receive the agency's "Intent to Take Adverse Action" notices right away. Borrowers who have been delinquent two years or less will also be asked to work with the FmHA in the very near future for a solution. I believe we have a duty to be compassionate in our efforts to work out the affected borrowers' difficulties; in fact, I fully believe that is an important responsibility the FmHA must undertake. However, I also believe that implementing a program in the immediate future which threatens foreclosure is unwarranted and causes tremendous fear and stress for those already suffering financial difficulties.

Many panic-stricken farmers in Arkansas have contacted me since first learning of the agency's intent to carry out this program. They sincerely want to find a way through this extremely difficult time, and greatly fear losing everything for which they have worked so diligently all their lives. I believe it is plainly unfair to overshadow efforts to assist these borrowers with the threat of imminent foreclosure.

On January 10, 1986 I wrote a letter to Secretary of Agriculture John Block, which I would like to submit today for the record. In that letter I requested that the implementation of the new policy be postponed for at least one year. That deferral would allow the Farmers Home Administration to have adequate time to make all available servicing options fully known to its borrowers. It would allow delinquent FmHA borrowers to have a more reasonable period in which to get their financial affairs in order and to be fully informed of their options for assistance under less threatening circumstances. I also requested that the FmHA continue its past policy of "policy borrowing" during this period, so that farm borrowers who can show repayment ability for those loans incurred during the 1986 crop year could borrow production financing from the FmHA. I believe it was unwise to eliminate that policy, and feel it is absolutely essential to help farmers survive this difficult period.

A deferral would also give some necessary relief to our already overburdened FmHA county offices. I can't imagine how these overworked, understaffed offices can possibly administer this new program efficiently or effectively without seriously compromising their ability to handle other routine programs. It is simply unfair to delay credit further for either delinquent or current borrowers because of the rapid implementation of this program without adequate preparation. I am very interested in receiving Mr. Block's response to my request and to hearing the views of Mr. Naylor and Mr. Block on this subject today.

Mr. Chairman, the issue before us today is one of basic fairness. We must do everything in our power to see that those citizens suffering under the severe economic plight that has befallen rural America are fully and fairly informed and protected. This agency was created to help those who, through no fault of their own, had no other source of help. It is crucial for us to ensure that a helpful and cooperative spirit remains intact through this critical period. Recovery will not be an easy process; in fact it will undoubtedly not even be possible in every single case. But every effort must be made to fairly assist our farmers. I fully believe this new policy fails to meet that basic objective and therefore, it must be reexamined and amended.

Thank you, Mr. Chairman.

## LETTER FROM SENATOR BUMPERS

January 10, 1986

Honorable John Block
Secretary
U. S. Department of Agricultural
Washington, D. C. 20250

Dear John:

I am writing to urge you to postpone the implementation of the new servicing program scheduled to be administered by the Farmers Home Administration following a U. S. Federal District Court hearing January 22, 1986. It is my understanding, that following this hearing date, the Farmers Home Administration intends to send notices of the intent to take adverse action to all FmHA borrowers who have been at least $100 delinquent for the past calendar year. Although I concur in the need to make our FmHA borrowers current in their accounts through either reamortization, rescheduling, or deferral servicing action, as well as the need to eliminate those borrowers from federal programs who have been illegally disposing of collateral mortgaged to the federal government, I believe that implementation of the new servicing program scheduled to be implemented later this month is not currently the right method to be undertaken.

It is my suggestion that the Farmers Home Administration defer for at least one year the implementation of these new regulations. In the interim, the Farmers Home Administration should strive to make all information available to producers who borrow from the Farmers Home Administration the scope of the new program and of the intent of the Farmers Home Administration to implement this program in early 1987. Deferring implementation of this program by one year would provide FmHA borrowers who are delinquent to the Farmers Home Administration a one year period in which to get their financial house in order, as well as to give some effective relief to our already overburdened FmHA county offices. Nearly 100,000 notices are scheduled to be sent to FmHA borrowers nationwide, requiring immediate action by FmHA county offices, and it is apparent that the ability of these offices to handle the new program as well as the regular OL, FO, and housing program loans is seriously compromised. Our farmers are already under tremendous stress because of the late date of the announcement of our agricultural programs, and a further delay in credit will disadvantage not only our delinquent borrowers but the 65% of the borrowers with the Farmers Home Administration who are current.

It is my hope, that the Farmers Home Administration will take advantage of the one year grace period to adequately inform all borrowers of their program through mailed information, public meetings, and personal county office visits. In the spirit of further cooperation during these extremely critical times facing all our farmers, I would request that the Farmers Home Administration continue the past policy of "policy borrowing" that would allow farm borrowers who can show repayment ability for those loans incurred during the 1986 crop year to borrow production financing from the Farmers Home Administration.

Like you, I am extremely concerned about the ability of our farmers, both those borrowing from the Farmers Home Administration and those borrowing from other lending institutions, to arrange necessary credit for the 1986 crop year. Congress has already attempted to take action to help stabilize the availability of credit through the Farm Credit System, and I believe that a delay in the implementation of the new servicing program will also help Congress in its attempt to develop an overall agricultural credit program after Congress reconvenes.

Your attention to my request is greatly appreciated. I look forward to hearing from you soon.

Sincerely,

Dale Bumpers

## SURPLUS CROPS

Senator MATTINGLY. the Senator from Oklahoma.

Senator BOREN. Thank you very much, Mr. Chairman.

I would like just to follow up again on an earlier point about the regulations on crops and surplus. They're really not subject to misinterpretation. It simply says, "The Director shall have the authority to deny operation loans to any farmer who is producing a product which is deemed to be in surplus." It says the same thing on ownership loans. I have heard it said that these were going to be withdrawn and substantially revised. If they're not, I certainly intend to introduce legislation and from what I have heard from others, I'm sure it will be joined in by many others.

You said now you're talking about advising them to say, only if a production level is being increased.

The farm bill requires a producer to plant a certain number of acres, in order to retain his or her base and participate in the program. They have to plant on a certain portion of their base.

If the farmer is required to plant those acres and if he does and he increases his productivity on those acres, as required by the farm bill, will he be penalized because his yield has gone up? Would you include that in the regulation? I think it would be very hypocritical to say to the farmer, you have to plant this number of acres in order to qualify for the commodity program, but if you're unfortunate enough to increase your productivity, increase your yield, you are then going to be penalized under this FmHA regulation.

Can you assure us that it won't affect increased yields under this proposed regulation?

Mr. NAYLOR. That was not the intention. I know time is short here, but we would be delighted and I will provide each of you with a complete background of this particular situation.

It really boils down to a concern, primarily regarding the dairy industry at a time, several years back where the Agency was making loans to start new dairy operations in areas with extreme surplus, much to the criticism of the local operators in the dairy industry and the inappropriateness of that type of lending. An expansion or creation of a new operation into the highly over produced market was at issue.

I think that the changes that Senator Andrews described earlier indicate that that is being taken care of; it is being canceled.

[The information follows:]

On December 2, 1985, FmHA published a proposed rule in the Federal Register relating to limiting FmHA loans for commodities that are in surplus.

We have received a number of comments on the subject and the Agency has modified the proposed rule to allow the Administrator to reject loan requests to expand the production base of agricultural commodities that are in surplus rather than completely restricting loans for the production of surplus commodities as was stated in the proposed rule.

It is essential that all aspects of FmHA involvement in financing farmers, ranchers, and aquaculture operators be carefully analyzed when processing loan applications to new producers or for new or expanding farming operations, when such commodities are in surplus.

FmHA loan funds would not be used to start new or expand a farmers operation beyond that which constitutes the normal base operation of the farmer. If a farmer would be able to increase his/her yields within the existing acreage: or increase the milk production within the existing milking herd: or increase the weight gain of livestock or poultry within the existing flock or herd, financial assistance would not be withdrawn. It is not the Agency's intent to prohibit minor changes in crop or livestock enterprises when changes are necessary to save the farming operation.

Senator BOREN. Well, I would hope that you would share, not only with this committee, but also the Agriculture Committee, the proposed language before you publish it again and that way, perhaps, we can avoid this problem.

Mr. NAYLOR. You can be assured that we will do that, Senator.

Senator BOREN. Let me ask another quick question.

Is it possible, as you look at the whole policy on foreclosures, that you might consider including in the criteria an assessment of the impact of foreclosures within a certain geographical area or land bases in that area?

For example, if you had a very high number of foreclosures in a very small geographical area, highly concentrated in a certain geographical area, obviously it would severely depress land values by those actions.

I hope that we would include that as a criteria—consideration of the potential impact, the concentration of foreclosures within a geographical area.

Is it possible that you could look at that?

### SALE OF INVENTORY PROPERTY

Mr. NAYLOR. Senator, as you and I worked on the farm loans on the Farm Credit System legislation, I know the concern that it causes you and me. We have and continue to evaluate the impact of releasing any property for sale that we might have in our inventory and its impact on the market, and it has been our practice, we initiated it, and we will continue that practice.

Senator BOREN. Thank you.

### DELINQUENCY DEFINITION

Senator MATTINGLY. Mr. Naylor, you made a comment—you and Mr. Clark made a comment about not receiving any payments, or not receiving payments for 3 years. Does that mean any payments? Even if the payments made were interest payments, would the borrower still be delinquent?

Mr. NAYLOR. I think the computer run definition or the definition that we have used to establish and identify delinquent borrowers is, "no payment whatsoever for 3 or more years on a loan which is outstanding."

Mr. CLARK. There are about 9,000 borrowers that are 5 years or more delinquent that we have not heard from, so they really need our attention.

### HOMESTEAD AMENDMENT

Senator MATTINGLY. In respect to this foreclosure area, as you know, there is the Homestead amendment, which I sponsored in the new farm bill. When do you expect to have written into the regulations these new rates pertaining to the amendment?

Mr. CLARK. We hope to have them out early this year, as early as possible. I would be less than honest if I didn't say that they will probably come out behind the general farm bill items because they are not most likely to be used later in the season, at the end of the season, relating to our more difficult cases, where there is an option to resolve those.

I think there is a great deal of merit to the proposal. I think it will be very useful and, indeed, particularly in the Southeast, there are situations where it is particularly applicable. We hope to make full use of it and want to do so as early as we can get the regulation out and begin to move and use this additional tool to aid people in need.

Senator MATTINGLY. In addition to the Homestead amendment, there is a section which allows the Secretary to administer a program devoted to 2,000 acres of land owned by a delinquent borrower.

Does the USDA plan to implement that provision and if so, how many troubled borrowers do you feel the program might be able to help?

Mr. NAYLOR. I really can't tell you all those numbers. Again, each geographic area will be affected differently, so it will only be in those areas that we can help and make it work. We are dedicated to doing that.

Senator MATTINGLY. Those are all the questions I have. Senator Harkin.

### FORECLOSURE PROCEDURES

Senator HARKIN. Thank you, Mr. Chairman.

I am a little mystified about these statements that you have made and commented upon by the chairman that statements were made that raised the anxiety and stress level.

Evidentally you're referring to statements that were made outside of the Farmers Home Administration and then you followed up by saying that there has been no real change in what you decided to do.

Well, the first report that came out from Farmers Home said that they were going to proceed in mailing out these foreclosure notices to farmers who had delinquent Farmers Home loans. Nothing was said that it was going to go out just to those that were 3 years delinquent or those that had transferred secured property. Why didn't you state that at the beginning?

If you had stated that at the beginning, you wouldn't have all this anxiety.

Mr. NAYLOR. No, Senator, I would take exception to that. I am not sure that would be the case, Senator Harkin.

I recall around the Christmas period, seeing a network news report where a State official in one of our Southern States announces on TV that it was the intention of the Federal Government to commence, within the next 30 to 60 days, foreclosure actions on about 6,000 individuals in their State. Then the network placed a notice on the screen that said nationally, within the next 60 to 90 days, they will begin foreclosures on 70,000 individuals.

Well, that was pure unmitigated poppycock and the height of irresponsible statements from all parties concerned.

This administration never has engaged in that type of action and has no intention of doing so, and the notices that were being sent were servicing notices, the purpose of which was to ask the borrower to come in and allow us to assist him to correct his delinquency with a series of seven distinct alternatives.

Now to characterize that as a foreclosure action is baloney and I can well understand why it would raise fear and concern in the minds of anybody seeing that kind of report.

Senator HARKIN. You have the announcement that was made on Tuesday, this must have been January 3, so it must have been the Tuesday before January 3 by Farmers Home. In that announcement, it said that if the farmer failed to respond to the letter within 30 days, the Agency's letter said, quote, "* * * it would proceed to collect the account."

How can you misinterpret that? It will proceed to collect the account.

Mr. NAYLOR. Senator, as I said earlier, if you choose to lift sentences out of context, yes, indeed, one could come to that conclusion, but if you read the rest of the letter, it clearly says. "* * * we are seeking to assist you. We have a series of seven steps that can resolve your problem. Please come talk to us. We are here to work with you and work this out."

I think that needs to be kept in context.

Senator HARKIN. You've heard the old joke about the guy that shows up to help from Congress and says, "I'm from the Government and I'm here to help you," and you wonder what he's got in his hip pocket.

Mr. NAYLOR. Senator, I would have to say to you the record is quite clear that we have——

Senator HARKIN. Why didn't you, at that time, say it's only for farmers who are more than 3 years delinquent, why didn't you say that?

Mr. NAYLOR. The record earlier, I think, made it quite clear what had happened.

Senator HARKIN. But it didn't say that.

Mr. NAYLOR. No; it didn't say that because we felt that we had procedures that were responsible and fair. The irresponsible individuals who made public statements clearly clouded the intent so badly that there was absolutely no responsible, reasonable individual that could have relieved the unnecessary stress that those irresponsible statements had created if we had proceeded with the original plan, so we changed it.

Senator HARKIN. Mr. Naylor, I have a great deal of respect for your intelligence, your grasp of these issues in your department, and I also have a great deal of respect for your administrative ability.

There remains, however, a gulf between our philosophies and the approach, and darn it, I still say that if you had put into that initial announcement, made it very clear, what you're telling us here today. I mean, here's your testimony today, it's very clear today, that these are only going to apply to those farmers who are over 3 years delinquent. If you had said that in the beginning, you wouldn't have had counter statements and this anxiety would not have occurred.

I submit that one irresponsible act begets another and excuse me for saying it, but I think it was irresponsible that your department didn't say specifically and clearly and concisely what you're saying to us today, which is very clear and concise. Had that happened in the beginning, I don't think that other irresponsible statements would have been made to which you have alluded.

Mr. NAYLOR. Senator, I understand where you're coming from and I would be happy to pursue this and work with you and discuss it further.

I would also suggest, on the other side of the coin, had some of the individuals, who created the concern and fear and stress with some of the statements they may have said, might have said instead to the individuals that they spoke to, "Here is an opportunity that the Farmers Home is offering you to resolve your delinquencies. You have a series of seven very generous options available to you. Go in and resolve this and avail yourself of them. They will assist you. They have the records over the last 4 years."

The original proposal has been quite responsible. But when you turn it into a political activity with irresponsible public statements which cause confusion and concern among the individual farmers who are already under severe stress, it is quite clear, I think, that we have to take steps to make it clear that our policies have not changed and we were acting responsibly. We were there to provide some compassionate assistance which we have been doing and will continue to do.

Senator HARKIN. Mr. Naylor, you have a way with words, no doubt about it.

Actually when are you going to send out those——

Mr. NAYLOR. The intent, from the outset has been, as soon as we have necessary administrative information and we can properly and accurately process and send them out.

Procedurely, I believe, Mr. Clark has indicated in early February, at this point, before we would be in a position to do that.

Mr. CLARK. That's correct. Originally we needed to obtain information from our branch offices after all the payments were posted. Now they are done, we are ready now to produce those lists.

## CREDIT REGULATIONS

Senator HARKIN. I just want to briefly get into title XIII of the farm bill, the credit title, which I mentioned in my opening statement.

There were some new sections added, 1309, 12, 13, 14, 15, and 20—1320 is the Interest Rate Reduction Program.

What I want to make clear is when you were talking with Senator Burdick with regard to new regulations, you said they would be out in mid-February. Were you referring to the entire title XIII only or the 1320?

Mr. CLARK. The numbers escape me, but as far as our procedures, it is an immediate publication, and we hope to do that in early February.

Senator HARKIN. Now there is a term of law. I want to know whether those will be proposed regulations or will they be interim regulations? If they are interim regulations, that would make them effective upon publication. Is that true?

Mr. NAYLOR. That's correct, Senator. We're trying to go the interim route so they can be effective immediately.

Senator HARKIN. I deeply appreciate that.

Senator MATTINGLY. Your time is up, Senator.

Senator HARKIN. Thank you, Senator.

Senator MATTINGLY. Senator Abdnor.

### LOANS TO NEW BORROWERS

Senator ABDNOR. I was very pleased to hear you say there will be loans available to new borrowers. That's right, isn't it?

Mr. NAYLOR. Yes.

Senator ABDNOR. Will there be direct loans available for these people?

Mr. NAYLOR. Yes, there will be, Senator. They will be available and, of course, we expect substantial growth in the Guarantee Program.

Senator ABDNOR. Back in the States, we have been hearing wild rumors that new borrowers will not qualify for loans. That's not true?

Mr. NAYLOR. No; it is not true.

Senator ABDNOR. I can tell people back in South Dakota, who have been hearing those wild rumors, that it is not true, that new borrowers will not qualify for new loans.

Mr. NAYLOR. No; it is not true.

### TIMELY PROCESSING OF APPLICATIONS

Senator ABDNOR. You may not be aware, but we had a severe drought in the western half of South Dakota. This area is eligible for FmHA emergency loans. I realize that the offices are understaffed, but I am receiving numerous complaints about the Emergency Loan Program.

Is there a lot of redtape in these applications?

Do these loans take long to process?

Mr. NAYLOR. Not from a processing standpoint, no, Senator.

Senator ABDNOR. In these cases, these people are really hurting.

Mr. NAYLOR. I understand.

Senator ABDNOR. There is a necessity to speed up the process if they are eligible for them in the first place. The process shouldn't be dragged out if they are eligible in the first place.

Do you anticipate the Gramm-Rudman-Hollings provision could have a bearing on this? But even at that, couldn't you do something like you did last year, use outside people to process these cases?

Mr. NAYLOR. We are looking and, indeed, the farm bill provides for us to use a revolving fund to add additional temporary people so we can timely process farm loans. However, we are trying to get clarification.

It is our current understanding that, to the extent that we expend the revolving fund money, under Gramm-Rudman we will be required to make an offset somewhere else in the Agency at some other time. That is a prospect that I feel obliged to share with this committee, that indeed, it is our intention to meet the needs by timely servicing of our farm borrowers. But it may be at the cost of a tradeoff in some other areas later in the year because of the requirement of Gramm-Rudman, as we understand it.

### FAMILY FARMING

Senator ABDNOR. I would like to ask one other question. Is it true that the farm bill requires recipients for emergency loans to be involved in family farming?

Mr. NAYLOR. Yes; it is, Senator.

Senator ABDNOR. About the family farms——

Mr. CLARK. This has always been a problem, Senator, down through the years, defining what is a family farm. We are now attempting that once again. We're taking out some of the restrictions, we hope, on the number of hired hands that could be required in a family operation.

So we hope to get that out to the field as soon as possible.

### FARM LOAN DELINQUENCIES

I would remind you, Senator, we have about $5.8 billion in farm loan delinquencies that farmers owe now, and $3.6 billion are disaster loans. They're very difficult to collect and they are very hard to monitor. It is a big problem for us, but the farm program does go on, and we need to include under the act the recipients of those loans and that's what really, I think, we're intending to do, plus the limit of dollars as well on the individual borrowers.

There is no regulatory change necessary for the family farm definition, and we will be getting that out to the field very shortly.

I would remind you again that our county committees need to make that decision. The county committee really has the responsibility of defining what is a family farm, particularly in this area and we're really trying to get some better guidelines to them.

Senator ABDNOR. If you have any problems, let me know.

Thank you, Mr. Chairman.

Senator MATTINGLY. Thank you Senator. Senator Specter.

Senator SPECTER. I don't know if you gentlemen are aware of it, but the impact that this issue has in the Commonwealth of Pennsylvania, as it relates to the farmer, has many people bankrupt.

Pennsylvania is known as a State of big cities and industry, but there are more people living in the rural part of my State than the rural part of any State in the United States. There are 2.5 million people living in rural Pennsylvania and that constitutes a larger population than many farm States.

The statistics that have been made available to me show that some 485 out of 3,108 Pennsylvania farmers are technically delinquent in their payments to FmHA. This causes an enormous amount of consternation and concern among many people in Pennsylvania.

One suggestion that I would make to you on structuring the programs in the future would be to look closer at what the documents say on the surface, and I know you have been concerned about that in the past.

When you have a designation of an "intent to take adverse action," I know that as a practicing lawyer, we used to put a lot of endorsements on pleadings that were absolutely terrible.

I had people bring those documents to me that had struck fear and terror in so many hearts, not knowing what was going to happen to them.

There are terrible concerns that imminently, some law official is going to descend on the premises and physically oust people. If you focus on a little broader explanation as to what is happening, perhaps even start off with some language about, "this is a problem, but do not be unduly concerned until we have a chance to talk it over with someone who knows the intricacies and technicalities of this." It is something that the Government has to do to try and be helpful in anyway that we can.

Mr. CLARK. The only response I have, Senator, is that I absolutely agree with you and that's why after we finally owned up to the fact that those were terrible words we used, we did change that form. But before that, I was going to send a comfort letter, signed by the Administrator, to every one of those borrowers saying, by law, I am sending you this notice, but here is what I want you to do and how I am going to work with you.

So I think there was an offer, even in our original plans.

Senator SPECTER. Well, at that stage, that's all you can do. We all learn from our experiences, but perhaps a suggestion that in the future you test the marketing, to bring some people in who sent out some of these letters and see what the response is.

We necessarily are far removed in Washington, DC, as to what is happening in the field. I think that is what really is one of the great values of democracy. It tells us some of the values, but we have a need to get out there. We are caught in the structure of government. You don't have the same pressures on you to see the people on the farms in small towns that we do. Believe me, we have a tremendous, tremendous amount.

### ELIGIBILITY REQUIREMENTS

I noticed in your prepared statement, Mr. Clark, the reference there, "* * * to be eligible the borrower must show that their delinquency is due to circumstances beyond their control, that they have lived up to all agreements of the FmHA."

When you say, "* * * have lived up to all agreements of the FmHA," that's a pretty sweeping statement.

Is there any flexibility? If that is rigorously enforced, probably no one would qualify for the eligibility.

Mr. CLARK. I would point out that we had a particular problem recently and I noticed that it was on television, and they panned around the farm as the wife and husband walked out to tell them of their plight.

The real payoff on this, sir, was the motor home sitting in front of the house. I guess you know that's what we're going to look at. Had they done their best and lived within their means and made wise management decisions, I think there is flexibility, as we interpret the rules.

Senator SPECTER. They have a motor home and that would be an asset to be considered.

But coming back to my question. When you say, if they had lived up to all agreements with the FmHA, do you really mean that?

When you say all agreements, they wouldn't have defaulted if they didn't have any problems, if they had lived up to all the agreements.

It would seem to me your eligibility has to apply as a discretionary matter, with some flexibility even if some of the requirements had not been complied with.

Mr. NAYLOR. Senator, I think the record and the conclusions of a series of auditors would indicate that we have a considerable amount of flexibility.

This is a matter of considerable concern to us. We frequently find ourselves, in this Agency and others, in a bit of a catch 22. The interest groups that initiated some of these legal actions have pursued courses to nail down with absolute precision every item that has been purchased.

It also may ultimately, I think, lead to a situation where you begin to hurt the producer more than you're helping him.

When you start tying the hands of every formula, and every equation, every number is spelled out in the regulation, the compassion and common sense that any reasonable person would use in trying to help their neighbors gets lost in the shuffle.

I would hope that all those who pursue some of those courses would recognize that and recognize the effect that it has on people they are claiming to be trying to help.

Certainly it has been our practice and will continue to be a very liberal, very discretionary program, wherever we can to be of support in that situation.

Senator SPECTER. Well, those are good words. We talk about discretion, very discretionary, very liberal, I think Senator Harkin would agree with that. Well, I'm not sure Senator Harkin would agree with that.

But I think, in view of this class person and this type of difficulty, we've had this kind of practice which I think is commendable and I think the Government has to follow it.

### COLLECTION PROCESS

One other question, Mr. Clark. The borrower has to respond within 30 days or the FmHA will proceed to collect. How rigid do you have to be on that 30 days? Sometimes we don't get our mail within 30 days. Some people are gone when notices arrive, problems with postal delivery. Is there some flexibility on that timeframe?

Mr. CLARK. Sure. There's got to be. If you've got a good reason, we would be open to consider that, but there has to be a date established obviously. It can't be 8 months from the mailing.

Senator SPECTER. Mr. Chairman, I have a number of questions that I would like to ask for the record.

Some of these questions have been covered already, but gentlemen, I would appreciate it if you would respond to all the questions because these are questions which have come to me from my constituents and your response to these specific questions would enable me to send these matters out to the constitutent and make a personal response.

Thank you very much.

Senator MATTINGLY. Senator Heflin.

### LOAN GUARANTEE PROGRAMS

Senator HEFLIN. Looking back over the past several years, there have been two programs that I recall. One the President announced during the Presidential campaign of 1984, which implemented a loan guarantee program. Then in about March 1985, we had the credit bill up. At that time, we were informed that only $25 million of the $630 million allocated for the Loan Guarantee Program was actually loaned to participants. Do you have some figures, to date, as to how much——

Mr. NAYLOR. Senator, that program almost literally exploded. As of the time that you make reference to and by the end of this last lending season, it was a billion-dollar program and growing.

We made further changes in cooperation with the banking community to make that program even more usable and more readily available to farmers in the course of the summer months, and those regulations have been in force since September of last year. The result has been another major jump in the increase of the banking credit system, and I expect the program will be heavily used this year.

Senator HEFLIN. As I recall, there was an agreement reached when the bill was on the floor—although it never became law—that, instead of the proposal that required 110 percent cash flow, that you have 100 percent cash flow. In other words, a farmer would have to show that he could break even, not having a 10-percent profit.

Then you had another program of interest deferral for 5 years—which was a Farmers Home directive—by which 25 percent of the interest and principal could be deferred for 5 years. But a farmer would have to have 110 percent cash flow to qualify.

The bill that was proposed required a reduction of 10 percent, but there was considerable opposition from the administration in the reduction of the cash flow requirement.

What has been the history of that program, that I assume is still at 110 percent cash flow, since that time?

Mr. NAYLOR. The program was extensively used by the Agency last year and I don't have the precise numbers, but I will provide them for the record.

I think, in fairness, Senator, I was probably one of the ones who had a major concern. As we work on that particular issue, as we work on the farm and home plans, you have to make a wide range of assumptions when you decide how much the borrower needs in the form of a new loan and in terms of the price of the commodities—what they will be at the end of the year, the production level per bushel, or that type of thing.

If you don't provide the operator with a little margin of safety, you may do him a great disservice in that he has a shortfall and he doesn't have enough money to effectively make it through the year. We didn't do enough for him.

The intent of that 110 percent has been to give him a little cushion for error, a margin for error when you determine the amount of loan that he needs, to take that into consideration. If the crop is a few bushels under what he expected or if the price is a little different than what he had expected, you don't leave him in a desperate financial strait automatically.

[The information follows:]

The Debt Set-Aside Program was one of President Reagan's four initiatives announced September 18, 1984. Set-aside provided for a portion of an FmHA farm borrower's debt to be set aside if certain criteria were met. Regulations for the set-aside program were published October 19, 1984, and the program was available through September 30, 1985. On September 21, 1985, a limited extension of set-aside was granted for pending appeals and applications on hand.

As of February 12, 1986, 15,808 FmHA farm borrowers were granted set-aside.

Senator Heflin. My question relates to eligibility. A farmer can't take advantage of it. You had one program where you were realistic and got down to 100 percent cash flow, one program where you didn't, and there is a pretty marked difference between the two programs on eligibility.

If you're going to make something available for the farmer to come out of this financial crunch, it's got to be done where he can become eligible for it. Otherwise, it's rhetoric.

Mr. Naylor. Senator, I would be happy to go through some of the reviews with you. We have stretched it far beyond what anybody would say we probably should have done and, indeed, that's what some more recent audits do say.

Our objective has been and will always be that we want that operator to succeed. We want him to have enough funds, when we make a loan to him, to be able to carry out a reasonably good plan. We don't help him any by leaving him with a shortfall at midseason when he needs to put fertilizer in the ground or has another problem, which happens all too often if you don't allow some margin for error in your assumptions. When you decide how big a loan you're going to give him, that, of course, is the intent in trying to provide some flexibility, to give him a little margin of safety.

I understand your concern.

Senator Heflin. You can get a margin of safety, maybe you don't have to have exactly 100 percent, but most farmers are dealing in pretty high gross and when you start and have a requirement of 110 percent or a 10-percent profit, you're being very unrealistic that you're going to be of any help to a farmer.

I just think that you're going—as you look at the regulations, you might as well be realistic and get down to the situation of where you can make it where they can become eligible, you can have a margin of safety.

But a farmer today that can show even a 1-percent profit, he's in pretty good shape.

Mr. NAYLOR. That's true, Senator.

Senator HEFLIN. And the ones that need help are those who can't show a profit.

Mr. NAYLOR. The margin of operating expenses really is what was being addressed in terms of looking at what his total operating expectations and costs are for the year. I think most of us would find, and I know we do in our operation, we do well to be within 10 percent of that because of variances in weather and yield and a whole number of factors. That type of swing is pretty typical in farming and then some.

So you try and provide them a little safety valve. I appreciate your concern and I commit to you that we, indeed, are and will take those types of things into consideration.

Senator HEFLIN. That's all.

Senator MATTINGLY. Thank you Senator Heflin. The Senator from Iowa.

### FARM BILL PROVISIONS

Senator HARKIN. Thank you, Mr. Chairman.

Dealing again with the regulations on the interest rate reduction in mid-February. I understand that there are a lot of—there are five other sections of title XIII dealing with the credit situation.

For example, section 1312 deals with prompt approval of loans. Section 1313 deals with the appeal process. Section 1309 deals with the settlement of claims.

These are all important provisions we added in the farm bill, and I wonder if you have any timeframe on getting the regulation.

I agree with you, the most important is section 1320 which is the interest rate reduction. That is coming out in the interim regulations next month, but these other ones are important too, and I just wondered if you had any—do you have the personnel to get these regulations drafted and—I know probably the answer is, "well, we'll do it as soon as we can." I would like to have some better indication than that.

Mr. CLARK. We're working overtime to do that, Senator. The appeal process, there's a limit on that of 120 days as I recall, but that is in process and we will be back at that appropriate time. We are working on all of those.

Mr. NAYLOR. Senator, our guidance to our agencies within the Department is to sequence these in the order in which they are needed.

By that I mean the ones that are needed to make the loans and get out front for the season will be out first because you need them for the entire lending season. Those that are situations that will occur later in the season, like appeals, perhaps, would be the next cycle out.

Obviously we need to get them out as early in the lending season as possible. Hopefully we'll be seeing those early in February. Mr. Clark has committed all of his resources. We do have them on double shifts and overtime, in effect, to get that done.

We share your concern and we'll get them out the door as fast as humanly possible.

Senator HARKIN. Thank you.

## SUBMITTED QUESTIONS

Senator MATTINGLY. We have other questions from Chairman Cochran which will be inserted in the record at this point along with questions submitted by myself and the other Senators.

[The following questions were not asked at the hearing but were submitted for response for the record:]

## QUESTIONS SUBMITTED BY SENATOR COCHRAN

The Farmers Home Administration loan programs are a vital part of the rural economy of my State of Mississippi, as well as other States represented on this Subcommittee. A large number of foreclosures in Mississippi would devastate the economy of the entire State at a time when the State government has been forced to make severe cuts in its own programs.

Question: How were the criteria chosen for determining the recipients for the letters? For example, why did you choose $100 as a minimum, or why did you choose 3-year cutoff for the last payment made?

Answer: FmHA normally considers an account delinquent if $10 is delinquent for 15 days. The $100 figure was choosen to eliminate those borrowers who have minor delinquencies which might occur because of misapplication of payments. It was felt that those borrowers who had not made a payment on a loan within the last 3 years were in serious financial trouble and if the borrower might be able to overcome this problem now was the time to do so.

A determination was made that by using a December 31, 1985, delinquency list of borrowers who were delinquent more than $100 on December 31, 1985, fewer farmers would be on the list since the majority of FmHA loans are due on January 1, and the December date represents the time of year when delinquencies are the lowest. In all of these cases, the borrower will be more than 1 year delinquent on a loan account.

Question: How many foreclosures do you estimate will result from the actions you are proposing?

Answer: The Agency cannot predict how many delinquent and problem loans eventually will be settled through adverse action. Each borrower's financial situation will be carefully evaluated, on a case-by-case basis, using the detailed guidelines set forth in the regulations. Until that is accomplished, there can be no realistic assumptions on which to base even broad estimates. However, foreclosure is the very last action that would be taken.

Question: Do you have a state-by-state breakdown?

Answer: FmHA does not have a breakdown on the number of estimated foreclosures on a state-by-state basis. We do have the information on number of delinquent borrowers in each State. We believe that many FmHA borrowers can stay in farming by using one or more of the various FmHA servicing options.

Question: Have you been able to estimate how many will request deferrals? Debt restructuring? Rescheduling, voluntary liquidation, etc.?

Answer: Since it is estimated that 65,000 borrowers were over $100 behind on their account on December 31, 1985, it is expected that the majority of these will request one or more of the servicing options.

## FARM BILL PROVISIONS

The 1985 farm bill provided to delinquent borrowers some financing, or debt-servicing, options which are not included in the list of options attached to the letter being mailed to borrowers. Included in those provisions is a conservation easement program whereby delinquent borrowers may have a portion of their debt written off in exchange for an easement on their marginal land, which will be taken out of production and used for wildlife or other purposes.

Question: Also, in the farm bill is a program whereby an FmHA debt is deferred for up to 50 years in order for a farmer to plant and harvest pine trees or other softwood timber on his land. Are you going to allow farmers to utilize these additional options?

Answer: The Department is carefully studying this program and all the ramifications of its implementation.

Question: If so, how will borrowers find out about these options?

Answer: FmHA will develop procedures to notify all borrowers of these additional servicing options.

Question: When will regulations be issued regarding these programs?

Answer: Regulations will be issued as soon as possible after the Department has made final determination on the implementation of these programs.

Question: Some borrowers, no doubt, will also participate in the Conservation Reserve program. Have you considered allowing the rental payments received by the farmer to be a satisfactory payment on his land for the 10-year period of his contract?

Answer: FmHA takes the income potential into account when determining the payments to be made on the FmHA debt. This determination must be made on a case-by-case basis. We do not feel it would be acceptable to base FmHA payments solely on the conservation reserve payments.

Question: We have been told that the "hard letter" will be sent to borrowers who have acted fraudulently or have made no payment whatsoever in the last 3 years. An estimate of 3,000 borrowers would receive that letter. The "soft letter," then, would go to borrowers who were $100 or more delinquent on December 31, 1985, but have made some payment in the last 3 years.

However, in your letter to me dated January 22 - Wednesday of this week, you say that the "hard letter" will be sent to borrowers who are 3 years or more delinquent, and that you estimate that about 27,000 borrowers will receive that letter. This seems to indicate that you plan to send this "hard letter" to borrowers who have made payments in the last 3 years, but who may not be completely caught up on their payments, and therefore, are classified as "delinquent for 3 years or more." Could you clarify that?

Answer: We estimate that about 27,000 borrowers have (a) made unauthorized disposition of security, (b) are in other than monetary default, or (c) have at least one loan on which no payment has been made for the past 3 years, since December 31, 1982. These borrowers will be sent Form FmHA 1924-14, "Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities," Form FmHA 1924-25, "Notice of Intent To Take Adverse Action" and Form FmHA 1924-26, "Borrowers Acknowledgement of Notice of Intent To Take Adverse Action."

Another 29,000 borrowers who have not made any payment on one or more loans since January 1, 1983, will only receive Form FmHA 1924-14 which outlines the servicing options available to them.

## FmHA PERSONNEL TRAINING

Question: The sheet on which you list the servicing options available to the farmer contains a sentence which states, "The County Supervisor can advise you of the information needed for a decision" of which option is best for the farmer. I have been told by State and local FmHA officials that they have received no guidance from Washington as to the criteria on which to base a decision to foreclose, defer, restructure, or any other option available to farmers. This includes crop prices and other factors which determine estimated cash flow for farmers. When can such guidance be expected at the county level?

Answer: The National Office provided training to the State Directors, Farm Program Chiefs, Farmer Program Loan Specialists, District Directors and Program Review Assistants in October and November of 1985. Each State subsequently had meetings in each district for all county office personnel. FmHA field offices are continuously being informed by FmHA instructions, administrative notices and memoranda regarding how to provide guidance to borrowers.

Guidance regarding the development of farm plans during the deferral period and on which to base rescheduling and reamortizations was distributed to all States on January 24, 1986. This guidance included factors to be used in determining prices and expenses which a farmer might expect to receive in 1991.

Question: Why were these letters circulated or planned to be mailed, before county offices have been instructed in how to handle the response to such letters?

Answer: Information was provided to all State, District and County Offices regarding the mailing of the notices at the time the new servicing regulations were issued to the field on November 1, 1985.

Question: Can you give us some idea as to the guidelines you will be issuing?

Answer: We have issued a number of Administrative Notices and a series of questions and answers to the field providing guidance. Attached are copies of these AN's and questions and answers.

## QUESTIONS AND ANSWERS ON THE AMENDED FARMER PROGRAM SERVICING INSTRUCTIONS

SUBJECT: Questions and Answers on the amended Farmer Program Servicing Instructions as Identified by Special PN Dated November 1, 1985

TO: All State Directors, FmHA

FEB 13 1986

This is the third in a series of information concerning questions that States have asked the National Office on the amended Farmer Program servicing regulations. Each State Director will immediately distribute the information to all District and County Offices.

Harris Blake
for VANCE L. CLARK
Administrator

Attachments

Sent by electronic mail on February 14,86 at 2:50 by DASD (IMPS). The State Director should advise other personnel as appropriate.

51. Question: What does the following statement on the bottom of page 3 of Form FmHA 455-3, "Agreement for Sale by Borrower," mean? "The FmHA debt is all immediately due and payable upon the signing of this form by the borrower and the FmHA representative." Can this statement be deleted by the County Office?

Answer: No. The County Office will not delete the statement on the form. When a borrower voluntary liquidates the security and executes this form, the account is declared immediately due and payable. If proceeds from the sale do not pay the account in full, the balance of the account may be considered for debt settlement without the need to accelerate the account at a later date. This form should only be used when the borrower is liquidating all FmHA security.

52. Question: Form FmHA 1962-1 states that "payments" in the form of checks, drafts or money orders must be made payable jointly to the order of the borrower and FmHA until the borrower's FmHA upcoming annual installment, including all delinquencies, have been paid. Does this mean that all the proceeds from the sale of security must come to FmHA until the upcoming annual installment, including all delinquencies, is paid?

Answer: When all or part of the proceeds of the sale of the security described on Form FmHA 1962-1 will be used as a payment on FmHA's debt, payments must be made payable jointly to the borrower and FmHA. Checks issued in accordance with assignment agreements will be handled as provided in those agreements. However, there may be times when FmHA is not expecting payments from the proceeds of a sale of a product on which FmHA has a lien. In such cases it is not required that payments be made jointly to the borrower and FmHA, but the planned use of the proceeds is to be shown on Form FmHA 1962-1 and the borrower is required to give a full accounting of the use of these proceeds to FmHA. Also, in the situation described in FmHA Instruction 1962-A, section 1962.17(d)(2)(ii), FmHA may inform the purchaser in writing that it is not necessary at the present time to make payments to FmHA.

Example: The borrower raises hogs, corn, wheat, and soybeans, and FmHA has a lien on each of these products. FmHA plans to receive payments out of the sale of wheat and soybeans. Payments for the sale proceeds for wheat and soybean must be jointly payable to the borrower and FmHA until the planned payment to FmHA has been made for the year. Payments for the sale proceeds from corn and hogs do not need to be made jointly payable.

It is recognized that proceeds from the sale of wheat and soybeans in this example may be planned for uses other than payment of FmHA's loan prior to the loan payment being made. In such cases, checks would be released for use as planned prior to making FmHA's payment. When proceeds are less than planned it will be necessary for the County Supervisor to meet with the borrower and amend the plan of operation and Form FmHA 1962-1.

53. Question: Do dairy assignments or other assignments have to be made payable jointly to the borrower and FmHA?

Answer: No, unless required by the assignment. (See reverse of Form FmHA 1962-1.)

54. Question: A borrower with a limited resource (LR) loan has been granted a deferral. FmHA Instruction 1951-A, section 1951.25(b)(5) states that such borrowers will not have the interest rate on their LR loan increased during the deferral period. However, section 1951.44(k) states that if the borrower's income increases sufficiently during the deferral period, we will require the borrower to make some payments. Can we increase his interest rate or cancel his deferral?

Answer: No. The interest rate will remain the same and the deferral will not be cancelled.

FmHA Instruction 1951-A, section 1951.44(k) states that if the borrower has a substantial increase in income and repayment ability that would enable the borrower to make some payment during the deferral period, the County Supervisor will ask (in writing) the borrower to sign Form FmHA 440-9, "Supplementary Payment Agreement," within 30 days of the date of the written request.

## REISSUANCE OF "ATTACHMENT A"

SUBJECT: Reissuance of "Attachment A" (Letter to Borrowers from Vance L. Clark attached to Package 1924-14, 1924-25 and 1924-26) Category 1 Borrowers

FEB 12 1986

TO: All FmHA State Directors

Another crisis---I have just received a memorandum from the General Counsel's office, which requests that we delete certain language in the subject letter, based on communications from counsel involved in the Curry v. Block case.

I know this change may cause further confusion and delay, and I apologize for that. The new letter will be Federal Expressed to you today. I appreciate your help in getting this reproduced and delivered to your County Offices as soon as possible.

In addition, I am sending by electronic mail the letter as changed. If you prefer, you can oversee the reproduction of this letter by cutting and pasting my signature block from the old letter to the body of this letter.

Reminder---Deadline for all mailings February 21, 1986!

Do not recall any letters the County Offices have already mailed and do not mail this letter as a second letter to any borrower. If you have questions, please call Jenny Phillips on FTS 382-1470.

Vance

VANCE L. CLARK
Administrator

Sent by Electronic Mail on Feb. 12, 1986 at 3:23 p.m. by DASD (IMPS). The State Director should advise other personnel as appropriate.

[ATTACHMENT]

Dear Borrower:

This letter and the accompanying material is extremely important to you, since it concerns your loan(s) with the Farmers Home Administration. Please-----I urge you to read all of this carefully.

As you well know, your loan with us is seriously delinquent or has other serious problems connected with it. This situation requires immediate attention. New regulations adopted by the Farmers Home Administration require us to send you the enclosed letter. You now have 30 days in which to respond should you wish us to consider any of the alternate servicing actions outlined.

These are, of course, difficult times in agriculture and you now need to make some tough decisions as to your future. Your loan with us, which is in default, makes your decisions even more difficult.

We at the Farmers Home Administration will do what we can to help. You need to read carefully the attached material and to respond to us within 30 days so that we may meet with you and perhaps advise you as to what relief, if any, we may be able to offer.

Again----please read the enclosed information very carefully and return the required form to the local County FmHA office within the next 30 days.

Sincerely,

VANCE L. CLARK
Administrator

## NOTICE TO IMPLEMENT AN NO. 1335

February 6, 1986

SUBJECT: Notice to Implement AN No. 1335 (1924)
dated February 3, 1986

TO: All FmHA State Directors

Implement AN No. 1335 (1924) on February 10, 1986.

You can begin mailing the appropriate forms and letters on February 10, 1986 to all borrowers described in Category 1 and 2 of AN No. 1335 (1924).

Other borrowers in monetary default will be handled in accordance with the applicable regulations covering the default.

You should plan to have all mailings completed by February 21, 1986.

VANCE L. CLARK
Administrator

Sent by Electronic Mail on February 6, 1986 at 5:15 p.m. by DASD (IMPS). The State Director should advise other personnel as appropriate.

# SERVICING DELINQUENT FARMER PROGRAM LOANS FOR FISCAL YEAR 1986

February 3, 1986

SUBJECT: Servicing Delinquent Farmer Program Loans
For Fiscal Year 1986

TO: All State Directors, Farmer Program Chiefs,
District Directors, and County Supervisors

Purpose/Intended Outcome: The purpose of the AN is to provide guidance to field offices and provide consistency nationwide regarding the servicing of Farmer Program (FP) borrowers whose loans are in monetary default. The intended outcome is to provide a systematic and prioritized manner of servicing those FmHA FP loan accounts which are delinquent.

Comparison With Previous AN: This AN replaces AN 1286 issued November 1, 1985.

Implementation Responsibilities: The following procedure will be followed in the issuance of notices to FP borrowers whose loans are in monetary default. These procedures do not apply to nonmonetary defaults. Borrowers who have made unauthorized dispositions of security will be handled under §1962.49(c)(1) and no cover letter will be used. Borrowers who no longer operate their farms will be handled under FmHA Instruction 465.1, XVII C and no cover letter will be used. Borrowers under the jurisdiction of a bankruptcy court will be handled under §1962.47, and this AN does not apply.

### Category 1

The following borrowers will immediately be sent: Forms FmHA 1924-14 "Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities," 1924-25 "Notice of Intent to Take Adverse Action," 1924-26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action" and cover letter, Attachment A.

> Borrowers who have at least one loan on which no payment has been made for the past three years (since December 31, 1982) as per Report Code 540 "Status Report of Farmer Program Accounts." When all servicing actions requested by the borrower have been considered and it has been determined that available servicing options cannot be granted, the borrower must be notified of FmHA's decision and given the opportunity to appeal. While any appeal is pending, a current FmHA Farm and Home Plan must be developed and Form FmHA 1962-1 "Agreement for the Use of Proceeds, Release of Chattel Property" must be completed providing for the release of proceeds for essential family living and farm expenses. Such releases must be provided during any administrative appeal proceedings and continue until such accounts are accelerated.

### Category 2

Other borrowers who are in monetary default as of December 31, 1985, (Finance Office Report Code 540) will immediately be sent Form FmHA 1924-14 only and cover letter, Attachment B.

When all servicing actions requested by the borrower have been considered and it has been determined that available servicing options cannot be granted, the borrower must be notified of FmHA's decision and given the opportunity to appeal. While any appeal is pending, a current Farm and Home Plan must be developed and Form FmHA 1962-1 must be completed providing for the release of proceeds for essential family living and farm expenses. Such releases must be provided during any administrative appeal proceedings and continue until such accounts are accelerated. These borrowers will not be sent Form FmHA 1924-25 or 1924-26 because of a monetary default until directed by the Administrator to do so.

For those borrowers on Finance Office Report Code 540 whose accounts indicate one or more loans with no payments ever made, the County Office will determine aging of the account by reviewing the case file and classifying the borrower as to the year the first installment was due and issue the appropriate notice as set forth in this AN.

Borrowers who were sent both the "Predetermination" package and an acceleration notice before October 20, 1984, will be sent no notices or letters of any kind. You should proceed to liquidate these cases, in consultation with OGC.

ADDITIONAL CREDIT MAY NOT BE EXTENDED TO BORROWERS WHO DO NOT QUALIFY FOR SERVICING ACTION UNLESS A FARM PLAN CAN BE DEVELOPED WHICH MEETS THE REQUIREMENTS OF §1924.57(c)(5)(i)-(v).

VANCE L. CLARK
Administrator

2 Attachments

Expiration Date: November 30, 1986

FILING INSTRUCTIONS:
Preceding FmHA Instruction 1924-B

[ATTACHMENT A]

Dear Borrower:

This letter and the accompanying material is extremely important to you since it concerns your loan with the Farmers Home Administration. Please----I urge you to read all of this carefully.

As you well know, your loan with us is seriously delinquent or has other serious problems connected with it. This situation requires your immediate attention. New regulations adopted by the Farmers Home Administration, as mandated by the Federal courts, require us to send you the enclosed letter. You now have 30 days in which to respond should you wish us to consider any of the alternate servicing actions outlined.

These are, of course, difficult times in agriculture and you now need to make some tough decisions as to your future. Your loan with us which is in default, makes your decisions even more difficult.

We at the Farmers Home Administration will do what we can to help. You need to read carefully the attached material and to respond to us within 30 days so that we may meet with you and perhaps advise you as to what relief, if any, we may be able to offer.

Again----please read the enclosed information very carefully and return the required form to the local County FmHA office within the next 30 days.

Sincerely,

Vance L. Clark

VANCE L. CLARK
Administrator

[ATTACHMENT B]

Dear Borrower:

This letter is extremely important to you since it concerns your loan with the Farmers Home Administration.

Our records indicate that your loan(s) with us were in default on December 31, 1985. This situation requires your immediate attention.

These are of course difficult times in agriculture and you now need to make some tough decisions as to your future. The status of your loan(s) with us makes your decisions even more difficult. We are enclosing Form FmHA 1924-14, (Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities), which describes the options that may provide relief to your financial difficulty.

Please contact us within 30 days for an appointment so that we may meet with you and advise you as to what relief, if any, we may be able to offer. Our phone number and address is as follows:

Sincerely,

County Supervisor

## STATUS OF DELINQUENT ACCOUNT SERVICING ACTIVITY

SUBJECT: Status of Delinquent Account Servicing Activity JAN 22 1986

TO: All State Directors, FmHA

We are making minor changes in our "Intent" letters 1924-25, and designing a different letter for those borrowers under 3 years delinquent. This requires a regulation change allowing me to establish a priority system in notifying our delinquent borrowers, and we are pushing for imminent publication. I apologize for this "twelfth hour" change, but surely this priority approach will better serve our borrowers, the Agency, and the taxpayers. Bear with us!

We continue to aim for mid-February regulation publication as to the 1985 Farm Bill provisions allowing other servicing options for our borrowers; i.e., Homestead provisions, interest rate buydown, etc. Be prepared, please, to submit your comments when we mail copy to you for review.

Also, we are pursuing all avenues to assure additional staff to meet our loan demands, both temporaries and overtime, as well as contractual assistance. I testify before the Senate Committee on Appropriations, Subcommittee on Agriculture, on Friday, January 24. Bear with us!

Again--hold all mailings of 1924, 1925, and 1926 until the signal is given and Finance Office listings furnished. Bear with us!

VANCE L. CLARK
Administrator

Sent by Electronic Mail on January 23, 1986 at 10:39 am. by DASD/IMPS.
No further distribution is necessary.

## ISSUANCE OF "NOTICE OF INTENT TO TAKE ADVERSE ACTION"

JAN 6 1986

SUBJECT: Issuance of "Notice of Intent to take Adverse Action."

TO: All State Directors, FmHA

Please inform all Farmers Home Administration (FmHA) personnel in your jurisdiction that Form FmHA 1924-25 "Notice of Intent to Take Adverse Action" will not be sent to any FmHA borrower before January 23, 1986. This directly applies to those borrowers who are not in monetary default.

VANCE L. CLARK
Administrator

Sent by Electronic Mail on January 6, 1986 at 1:33 p.m. by DASD, IMPS. State Directors will immediately advise District and County Office about this information.

## ADMINISTRATOR'S LETTER TO BE MAILED WITH SERVICING NOTICE TO DELINQUENT BORROWERS

January 2, 1986

SUBJECT: Administrator's Letter to be Mailed with Servicing Notice to Delinquent Borrowers

TO: All FmHA State Directors and Public Information Coordinators

Attached is a letter bearing my signature which MUST accompany all Notices of Intent to Take Adverse Action (Form FmHA 1924-25) to be mailed to delinquent borrowers under the new servicing regulations.

Please reproduce this letter in sufficient numbers to furnish each FmHA County Office with an adequate supply in time for the mailings.

Let me emphasize these points:

1. The letter from me is to be placed on top of other material.
2. This letter goes ONLY to borrowers. It is NOT to be placed in mail going to any other addressee, i.e., bankruptcy attorneys, or otherwise distributed to nonborrowers.
3. Its use is MANDATORY by all FmHA offices mailing notices under the Coleman/servicing regulations.

I know I can count on your cooperation. Let's do it right!

Vance

VANCE L. CLARK
Administrator

Attachment

## [ATTACHMENT]

Dear Borrower:

This letter and the accompanying material is extremely important to you, since it concerns your loan(s) with the Farmers Home Administration! Please-- I urge you to read all of this carefully.

New regulations adopted by the Farmers Home Administration (FmHA), as a result of legal and administrative decisions, require that we send the enclosed "Notice of Intent to Take Adverse Action" because your account is delinquent or has other problems requiring immediate attention. Please note that you have 30 days in which to respond if you wish us to consider alternative servicing actions which could allow you "breathing room" in the months ahead.

As Administrator, let me assure you that all of us at FmHA are painfully aware of the terrible state of the American farm economy, and we sincerely intend to work with you to the fullest extent possible to work out a resolution to your loan problems. Please be sure that you carefully examine the servicing options as outlined in the enclosed notice to see if one or more might appear to meet your needs. I commit to you that we will do everything within our legal authority to help you through these difficult times.

Again, please read the enclosed information carefully and return the required form to your local County FmHA Office within the next thirty (30) days.

Sincerely,

Vance L. Clark

VANCE L. CLARK
Administrator

Enclosures

## CONTACTING CONGRESSIONAL DELEGATIONS ON COLEMAN REGULATIONS

SUBJECT: Contacting Congressional Delegations on Coleman Regulations

DEC 30 1985

TO: All State Directors, FmHA

A Farmers Home Congressional Briefing on the Coleman regulations scheduled last week had to be canceled. The briefings are expected to be rescheduled sometime in late January when Congress returns.

In the meantime, State Directors who have not contacted their Congressional delegations to explain the Coleman regulations are urged to do so as soon as possible.

As an important aside--many of our County Supervisors, some District Directors and a few State Office staff are rightly responding to media inquiries. Please use caution as this is done and use good common FmHA sense to "defuse" the hysteria that seemingly arises when "off the cuff" numbers of notices, discussions and projections of adverse actions are thrown out. Let's be professional! Our servicing options are a plus--not a negative.

Attached to this memorandum are three fact sheets or talking points for use as you deem appropriate. They are:

- "Background on Coleman Regs For Reference"
- "FmHA Servicing Regulations Procedures"
- "Servicing Delinquent and Problem Loans."

VANCE L. CLARK
Administrator

Attachments

Sent by telemail on 12/30/85 at 2:50 pm.

State Directors should notify other personnel as appropriate.

## BACKGROUND ON COLEMAN REGS FOR REFERENCE

The Farmers Home Administration has published (Nov. 1) regulations spelling out the steps the agency is to take in servicing accounts for farm borrowers who have fallen seriously behind in payments on their loans. The regulations were designed to give borrowers clear and consistent guidelines on how their loans will be serviced, and are a result of both administrative and legal decisions.

The regulations were published in draft form in November 1984, and several hundred comments were received. Those comments were considered when the final regulations were prepared and published.

Sometime in January, the FmHA Finance Office will send to FmHA County Offices a list of borrowers who were delinquent more than $100 as of December 31, 1985. Since most FmHA farm loans are due on each January 1, the December date represents the time of year when delinquencies are the lowest. And, since the loans are due on January 1, a borrower delinquent as of December 31 will also have been delinquent in January and, thus, will be more than a year overdue in January 1986.

The County Supervisor is required to send the delinquent borrower a notice that some action is anticipated (it will depend on the condition of the loan account). The notice will include certain servicing options that the borrower can request FmHA to consider. The borrower will have 30 days to respond to the notice, whether or not a servicing choice is made. If the borrower does not respond the County Supervisor will proceed with the intended action.

Choices available to the borrower (for FmHA to consider):

1. Rescheduling loans at regular rates and terms.
2. Rescheduling operating and ownership loans at limited resource rates.
3. Deferral of payments for 5 years.
4. Subordination of FmHA security interest to another lender.
5. Restructuring by selling a portion of assets.
6. Paying the account current or making restitution for any unauthorized disposal of security (must be done in 60 days).
7. Liquidate voluntarily by (a) selling the property for cash; (b) conveying the property to the Government; or (c) transferring the property to an approved applicant (must be done in 120 days).

It is not known how many borrowers will receive the notices, what their responses will be or the ultimate outcome of the servicing steps. Each loan account will be handled on an individual basis and decisions will be based on the circumstances involved in each case.

Dec. 1985 - C/S

## BRIEF SUMMARY
## FmHA SERVICING REGULATIONS PROCEDURES

FmHA servicing regulations were developed to give FmHA borrowers with delinquent and problem loans clear and consistent guidelines on how their accounts will be serviced by the agency. The regulations are a result of both administrative and legal decisions.

The regulations, "Special Supervision of Delinquent and Problem Case FmHA Farm Borrowers," were issued as a proposed rule in the Federal Register November 30, 1984, with a 60-day comment period. The final rule was issued November 1, 1985.

The regulations spell out the various servicing alternatives which may be considered to try to bring loans current. They are: 1) deferrals; 2) low interest limited resource loans; 3) consolidation; 4) rescheduling; 5) reamortization; 6) subordination; and 7) restructuring by selling a portion of assets. Only after it is shown that none of the alternatives will succeed in bringing accounts current and provide a reasonable chance for success will the agency begin foreclosure proceedings.

Historically, the lowest delinqency rate occurs on December 31 each year since most annual loan payments are due on January 1. All FmHA borrowers who are delinquent on December 31, 1985, will be sent by registered mail a notice of "Intent to Take Adverse Action." This notice will indicate the specific problem with the borrower's account and REQUIRE THE BORROWER TO RESPOND WITHIN 30 DAYS of receiving the notice. The mailing will also include a complete description of the seven servicing alternatives and a reply form in which the borrower can indicate the servicing action he or she wants to be considered.

When the borrower's response is received, an appointment is set up to review the borrower's financial conditions. If one of the servicing options is approved, the notice to take adverse action is terminated. If the borrower fails to respond within 30 days, FmHA will proceed to collect the account. Failure to respond within 30 days also forfeits any appeal rights.

Once a borrower has responded and met with the county supervisor, and a favorable decision cannot be reached, the borrower may appeal the adverse decision. During the appeals process, FmHA will honor agreements concerning the release of funds from the sale of securities.

The agency cannot predict how many delinquent and problem loans eventually will be settled through adverse action. Each borrower's financial situation will be carefully evaluated, on a case-by-case basis, using the detailed guidelines set forth in the regulations. Until that is accomplished, there can be no realistic assumptions on which to base even broad estimates.

Last year, fiscal 1985, FmHA was able to assist 164,000 borrowers to reach a cash-flow position through special credit assistance such as deferrals, reschedulings, etc.

Until the FmHA finance office in St. Louis determines the number of delinquent borrowers on December 31, 1985, the agency will not know exactly how many notices will be sent out. On September 30, 1985, some 80,000, or 28 percent of FmHA farm borrowers were delinquent. After three additional months to make payments, the number of delinquencies will be lower.

UNITED STATES DEPARTMENT OF AGRICULTURE
Farmers Home Administration
Washington, D.C. 20250

IN BRIEF

## SERVICING DELINQUENT AND PROBLEM LOANS

New procedures were developed to give FmHA borrowers with delinquent and problem loans clear, consistent and predictable guidelines on how their accounts will be serviced by the agency, and in compliance with court rulings. Loan programs affected are emergency, farm operating, farm ownership, soil and water loans, and rural housing loans for farm service buildings. Among the servicing considerations of particular interest are:

DEFERRALS. Specific information is provided on deferrals, such as what may constitute circumstances beyond a borrower's control (i.e., loss of income due to unemployment, illness, death, natural disaster or economic conditions), and how FmHA determines eligibility (i.e., good faith efforts to meet agreements, documented inability to do so, ability to make payments after deferral, proper maintenance of security).

USE OF SALES PROCEEDS. Instructions tell how borrowers may assist FmHA field staff in planning uses of proceeds from sale of security, such as paying debts, preserving the security in case of natural disaster, for essential family living expenses and farm operating expenses. Sales will be based on written agreement.

SERVICING STANDARDS AND ALTERNATIVES. Conditions are spelled out as to when and under what circumstances a borrower could expect to hear from the FmHA County Supervisor proposing to take steps to resolve the delinquency or other problem. The proposed action would depend on the condition of the account.

BORROWER'S CHOICES. The servicing choices available to the borrower are explained. They include a request for rescheduling at regular or limited resource rates, deferral, subordination of FmHA's interest to another lender; restructuring by selling a portion of assets; curing the loan default by paying the account current or voluntarily liquidating it. The borrower's choices include the right to appeal FmHA's decisions.

AFTER THE CHOICE. The next phase in the servicing sequence is spelled out: The borrower is given 30 days to respond to decisions. If there is no response, FmHA will proceed with its intended action. If the borrower chooses a servicing action that is approved by the agency, the notice is terminated. If the borrower gives notice of appeal of FmHA's intended action, no further action is taken until the appeal is concluded. Requirements of the appeals process itself, such as assuring that hearing officers are from separate districts and have no prior involvement with the case, are explained in detail. FmHA cannot terminate planned assistance to a borrower during an appeal.

December 1985

## QUESTIONS AND ANSWERS ON THE AMENDED FARMER PROGRAMS SERVICING INSTRUCTIONS

SUBJECT: Questions and Answers on the Amended Farmer Programs Servicing Instructions as Identified by Special PN Dated November 1, 1985

DEC 10 1984

TO: All State Directors

A typographical error was made on questions 19 and 20 that were sent to your office on December 3, 1985.

In the answer on question 19, the reference to 1962.17(a)(1) and (2) should be 1962.18(a)(1) and (2).

On question 20, the reference should be made to question 19, not 20.

Attached is a replacement sheet for questions 19 through 22 that were previously sent to you.

Harris L Blake
For VANCE L. CLARK
Administrator

Attachment

Sent by electronic mail on Dec.12,85 at 9:55 a.m. by DASD (IMPS). The State Director should advise other personnel as appropriate.

[ATTACHMENT]

19. Question: If a borrower disposes of FmHA security without authorization and it is the second offense that occurred during the crop year, but makes restitution, what action does the County Supervisor have to take?

Answer: The County Supervisor places the borrower's name on the Unapproved Disposition of Security Log in accordance with FmHA Instruction 1962-A, Section 1962.18 (a) (1) and (2). The State Director will refer the case to OIG in accordance with FmHA Instruction 2012-B. Any questions as to whether the matter should be referred will be resolved through consultation with OIG and confirmed in writing. The County Supervisor will continue with routine servicing actions.

20. Question: Could we make a subsequent loan to the borrower in question 19?

Answer: Generally, the answer is no. The county committee will make the decision on each case. The reason for the conversion of property must be properly evaluated.

21. Question: When FmHA has a loan secured with chattels but does not make an annual operating plan, is a Farm and Home Plan completed to go along with Form FmHA 1962-1?

Answer: A Farm and Home Plan is not always required by FmHA Instruction 1924-B, Section 1924.57, but in all cases in which FmHA has chattels as security Form FmHA 1962-1 will be completed. See the FMI, Form FmHA 1962-1, for instructions on completion.

22. Question: Is Guide Letter 1962-A-5, paragraph four, to be changed regarding establishment of a time limit on response?

Answer: A revision to the guide letter is being considered similar to the following:

> If you are going to pay FmHA or replace the property with property of equal or greater value, or have information that will show this demand is in error, you must contact the County Office within 5 calendar days following receipt of the notice, to arrange an appointment to discuss this matter. Our telephone number is _______________.

It is planned that instructions for the revised guide letter will require that it be sent to the borrower by certified mail, return receipt requested.

## QUESTIONS AND ANSWERS ON THE AMENDED FARMER PROGRAMS SERVICING INSTRUCTIONS

SUBJECT: Questions and Answers on the amended Farmer Program
Servicing Instructions as Identified by Special PN
Dated November 1, 1985

DEC 2 1985

TO: All State Directors, FmHA

The National Office will be furnishing information periodically to all State Directors concerning questions that States have asked the National Office on the amended Farmer Program servicing regulations. Each State Director will immediately distribute the information to all District and County Offices.

Vance L. Clark

VANCE L. CLARK
Administrator

Attachments

Sent by electronic mail on Dec. 4, 1985 at 3:26 pm. by DASD (IMPS).

The State Director should advise other personnel as appropriate.

[ATTACHMENT]

Questions and Answers of the November 1, 1985, amended FmHA Farmer Programs Servicing Regulations

1. Question: Can FmHA send Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," to delinquent borrowers before the December 31, 1985, delinquency report is received from the Finance Office?

   Answer: No, unless there's some other reason such as conversion. FmHA Instruction 1924-B, Section 1924.71 states that the delinquency list of December 31, 1985, will be used to determine the delinquent borrowers who are to receive Form FmHA 1924-25.

2. Question: FmHA Instruction 1962-A, Section 1962.47(a)(3) states, "Borrowers who have filed Chapter 7 bankruptcies must either dismiss their bankruptcies or must reaffirm their entire FmHA debt..." Does this mean that if a borrower has an FO and an OL loan and receives a discharge on one and wants to reaffirm on the other, can FmHA continue with the borrower on the loan he wants to reaffirm?

   Answer: No.

3. Question: The last sentence in FmHA Instruction 1962-A, Section 1962.47(a)(3) states, "FmHA will not discuss any of the options with either the borrower or the borrower's attorney so long as Chapter 7 bankruptcy is pending." What is meant by "pending?"

   Answer: A bankruptcy is pending until it is either dismissed or the debt is reaffirmed.

4. Question: A borrower is current. He/she will go delinquent after January 1. Can we make annual operating loan now?

   Answer: Only if it can be shown that the delinquency can be corrected and a financially sound plan of operation can be developed. Take into consideration the use of the various servicing options.

5. Question: If a loan is being made and a Farm and Home Plan is developed and the balance available is sufficient to pay FmHA but not other creditors does it have to cash flow for payment to all other creditors?

   Answer: Yes.

6. Question: How do we handle bankruptcy cases now pending?

   Answer: Send Exhibit D (with attachments) of FmHA Instruction 1962-A to the debtor's attorney. Consult OGC on Chapter 7's that have been discharged.

7. Question: AN 1286(1924) suggests the order of priority that a State is to submit cases to OGC that have been accelerated. Does the AN need to be followed in the order of priority for all cases as shown on the AN?

Answer: This AN applies only to cases that have been accelerated. This is a suggested priority list that States should follow. However, if the State Director has selected cases where circumstances warrant changing priority, he/she may do so.

8. Question: Is Form FmHA 1924-25 sent to all delinquent borrowers listed on the December 31, 1985, report from the Finance Office since AN 1286(1924) establishes priorities?

Answer: Yes, in accordance with FmHA Instruction 1924-B, Section 1924.71. The priorities listed in AN 1286(1924) are used after accounts are accelerated and establish priorities for submission to OGC only.

9. Question: If a borrower is listed on the Finance Office December 31, 1985, delinquency report, but pays current before Form FmHA 1924-25 is sent, is this form still used?

Answer: Yes. See FmHA Instruction 1924-B, Section 1924.71. If the borrower asks why the form was sent, it should be explained that FmHA official records show that the payment was not processed before the 12-31-85, delinquency report was prepared. It should be further explained to the borrower that consideration will be given to any request for servicing relief which the borrower makes and that no adverse action will be taken by FmHA based on a delinquent report if the borrower has in fact made the payment.

10. Question: After an account has been accelerated FmHA cannot accept a partial payment. What is done with income from milk assignments, oil lease payments, crop income, etc. after an account has been accelerated?

Answer: Prior to accepting or denying funds, the State Office should contact OGC for advice. The County Supervisor should contact the State Office for advice. The State Office will contact OGC before replying to the County Supervisor.

11. Question: FmHA Instruction 1943-A, Section 1943.18(a) refers to payment of partial interest during the first five years. Does this apply to deferrals?

Answer: Deferrals apply only to loan servicing. The above instruction does not apply to deferrals.

12. Question: Can a borrower be given more than 120 days to voluntarily sell, transfer or convey the property after the Form FmHA 1924-25 has been returned?

Answer: No. FmHA will proceed with liquidation.

13. Question: FmHA Instruction 1962-A, Section 1962.17(b)(4) requires if for any sale the amount of proceeds actually received is above or below the amount of proceeds planned to be received as shown on Form FmHA 1962-1, the borrower must get FmHA's permission in advance. Could a factor of 5% or so be used?

Answer: If, for any sale, the amount of proceeds actually received is above or below the amount of proceeds planned to be received, as shown on Form FmHA 1962-1, the borrower will notify the County Supervisor immediately after the sale. The County Supervisor will approve/disapprove the action on Form FmHA 1962-1.

Any changes in sale proceeds that the County Supervisor determines that will materially effect the operating plans will require a revision to the Form FmHA 1962.1. A revision will be made by drawing a line through items changed, and changes will be written in, dated, and initialed by the borrower and the County Supervisor.

14. Question: If a borrower has income from security-crop, livestock, etc., still to be received this year, does the County Office have to complete Form FmHA 1962-1 on prior agreement for use of these funds. When does the county begin to use the Form FmHA 1962-1?

Answer: Yes. The effective date for the use of Form FmHA 1962-1 was November 1, 1985, to account for the disposition of crop and chattel security.

15. Question: What should FmHA use to establish a base price for products at the end of a 5-year deferral?

Answer: Advice from the Extension Service in your State and other reliable sources should be used. The National Office is preparing an Administrative Notice that will give advice in this area.

16. Question: Do we have to prepare a Farm and Home Plan for the end of the deferral period?

Answer: Yes. FmHA Instruction 1951-A, Section 1951.44(b)(2) states the 5-year deferral must be temporary. Section 1951.44(d)(3) states that a farm plan(s) of operation is needed which details realistic projections of the operation after the temporary situation is alleviated.

17. Question: Do we need to send Form FmHA 1924-14 during November 1985?

Answer: Yes. See FmHA Instruction 1924-B, Section 1924.59(d).

18. Question: If the account is accelerated and FmHA cannot extend any further services, and there are undisbursed loan funds, what disposition do we make of these funds?

Answer: The State Office should contact OGC for advice.

19. Question: If a borrower disposes of FmHA security without authorization and it is the second offense that occurred during the crop year, but makes restitution, what action does the County Supervisor have to take?

Answer: The County Supervisor places the borrower's name on the Unapproved Disposition of Security Log in accordance with FmHA Instruction 1962-A, Section 1962.17 (a) (1) and (2). The State Director will refer the case to OIG in accordance with FmHA Instruction 2012-B. Any questions as to whether the matter should be referred will be resolved through consultation with OIG and confirmed in writing. The County Supervisor wil continue with routine servicing actions.

20. Question: Could we make a subsequent loan to the borrower in question 20?

Answer: Generally, the answer is no. The county committee will make the decision on each case. The reason for the conversion of property must be properly evaluated.

21. Question: When FmHA has a loan secured with chattels but does not make an annual operating plan, is a Farm and Home Plan completed to go along with Form FmHA 1962-1?

Answer: A Farm and Home Plan is not always required by FmHA Instruction 1924-B, Section 1924.57, but in all cases in which FmHA has chattels as security Form FmHA 1962-1 will be completed. See the FMI, Form FmHA 1962-1, for instructions on completion.

22. Question: Is Guide Letter 1962-A-5, paragraph four, to be changed regarding establishment of a time limit on response?

Answer: A revision to the guide letter is being considered similar to the following:

> If you are going to pay FmHA or replace the property with property of equal or greater value, or have information that will show this demand is in error, you must contact the County Office within 5 calendar days following receipt of the notice, to arrange an appointment to discuss this matter. Our telephone number is ______________.

It is planned that instructions for the revised guide letter will require that it be sent to the borrower by certified mail, return receipt requested.

23. Question: If a loan has been cosigned, is the cosigner affected by the new servicing regulation?

Answer: Yes. Forms FmHA 1924-14, 1924-25, and 1924-26 should be sent to both the cosigner and the borrower.

24. Question: Can a subsequent loan be made after Forms FmHA 1924-14, 1924-25, and 1924-26 have been sent?

Answer: We have a difficult time conceiving of a situation in which the borrower would be eligible for a subsequent loan after these forms were sent unless the default were corrected, but the eligibility requirements for the particular loan involved should be closely reviewed.

25. Question: We have a loan with a borrower made under the continuation policy. Our agreement was to continue with the borrower until May 1986. Do we send Forms FmHA 1924-14, 1924-25, and 1924-26 when the December 31, 1985 delinquency report is sent out by the Finance Office?

Answer: Forms FmHA 1924-14, 1924-25, and 1924-26 will be sent if the borrower is listed on the December 31, 1985 report.

26. Question: An FmHA borrower applied for debt set-aside. The request was denied. Borrower appealed the decision. The denial

decision was upheld and borrower is now in default. Do we have to send Forms FmHA 1924-14, 1924-25, and 1924-26 to the borrower and give new appeal rights at the appropriate time if the borrower is on the December 31, 1985 report?

Answer: Yes.

27. Question: FmHA Instruction 1924-A, section 1924.59(d) requires that Form FmHA 1924-14 be sent to all borrowers in November. If the borrower is in bankruptcy do we send Form FmHA 1924-14 to the borrowers attorney?

Answer: No, not under the authority in section 1924.59(d). Handle bankruptcy cases in accordance with FmHA Instruction 1962-A, section 1962.47(a)(3).

28. Question: Form FmHA 1924-25, first sentence, second paragraph states "We have attempted to work out a satisfactory solution to your credit problems through the various options available, but have not been able to do so." In some cases we may not have been in contact with the borrower for 1-3 years. Can this sentence be revised to fit the situation?

Answer: Form FmHA 1924-14 is to be sent to each borrower as stated in question number 27. This will demonstrate that the borrower has been notified of the servicing alternatives. Form FmHA 1924-25 is not to be revised.

29. Question: A borrower is listed on the December 31, 1985, Finance Office delinquency report. Must Form FmHA 1924-14 be sent to a borrower in November before we send Forms FmHA 1924-14, 1924-25, and 1924-26?

Answer: Yes. If not sent to date, do so at once.

30. Question: What do we do with loans that were accelerated prior to December 20, 1983, and after December 20, 1983? Are Forms FmHA 1924-14, 1924-25, and 1924-26 sent to the borrower?

Answer: As a general rule, accelerations that occurred prior to use of the Pretermination package should already have been reversed under the instructions given in the Administrator's December 20, 1983 letter. If there are any such accelerations still pending, they should be reversed immediately and the borrower's account will be handled in accordance with the November 1, 1985 regulations.

The accelerations which occurred after the borrower was sent both a Pretermination package and an acceleration notice before October 20, 1984, will proceed without regard to the new regulations. If the borrower did not receive a Pretermination package or if the borrower received a Pretermination package but the account was not accelerated before October 20, 1984, the acceleration should be reversed and the borrower's account will be handled in accordance with the November 1, 1985, regulations.

There should have been no acceleration notices sent on or after October 20, 1984, except those notices necessary to accept debt settlement offers.

In some States not covered by the decision in

*Coleman v. Block* different rules may apply. Consult OGC on any case you have questions on.

31. **Question:** A borrower who is current desires to convey his farm to FmHA. Do we need to send the borrower Form FmHA 1924-25 and Form FmHA 1924-26 or only Form FmHA 1924-14?

**Answer:** Send only Form FmHA 1924-14 at this time. If the borrower was current on January 1, 1985 and desires to voluntarily convey the farm while he is current, use only Form FmHA 1924-14. See Paragraph XVII A and E of FmHA Instruction 465.1 and FmHA Instruction 1955-A, section 1955.10.

32. **Question:** Who can we send Form FmHA 1924-25 to before December 31, 1985?

**Answer:** Send the form to any borrower who is in default on their loan *other than monetary default* in accordance with the amended FmHA Servicing regulations. Examples of these types of defaults would be conversion cases and borrowers who have ceased farming.

33. **Question:** Forms FmHA 1924-14, 1924-25, and 1924-26 are sent to a borrower by certified mail and the borrower refuses the letter. When does the 30 day reply period start?

**Answer:** The 30 days start on the date the borrower refuses delivery of the certified letter. The refusal date will appear on the certified mail receipt.

34. **Question:** Who is authorized to sign Form FmHA 1924-14?

**Answer:** County Supervisor or anyone he/she has delegated the authority to sign.

35. **Question:** A prior lienholder has started foreclosure action. Can FmHA join in with the prior lienholder on foreclosure without sending the borrower Forms FmHA 1924-14, 1924-25, and 1924-26?

**Answer:** No.

36. **Question:** In developing a Farm and Home Plan in which a deferral is being considered, must the plan show a "margin" as in debt set-aside?

**Answer:** No. However, the Farm and Home Plan must show the necessary cash flow.

37. **Question:** Does a borrower have to be farming in order to have loan installments deferred?

**Answer:** Yes. FmHA Instruction 1951-A, section 1951.44(c)(4) states that the borrower has to plan to continue to operate the farm.

38. Question: FmHA Instruction 1962-A, Section 1962.40(c) refers to Section 1872.17(b) of part 1872. What is the corresponding FmHA regulation?

Answer: FmHA Instruction 465.1 XVII B.

39. Question: When there is unauthorized disposition of FmHA security, FmHA Instruction 1962-A, section 1962.18(a) states that "When a borrower has not properly accounted for the use of proceeds from the sale of chattel security, the County Supervisor must request restitution by use of a letter similar to Guide Letter 1962-A-5." FmHA Instruction 1962-A, section 1962.18(a)(1) states that "If a borrower makes restitution or provides sufficient information to enable the County Supervisor to post-approve the transaction on Form FmHA 1962-1, no further action will be taken against the borrower." Is post-approval mandatory?

Answer: No. Each case will need to be reviewed and a determination made if the requirements for post approval have been met.

40. Question: On Form FmHA 1962-1, when it is shown that an item of equipment will be sold, can we use an estimated value on the form?

Answer: Yes. Base the value on the best information available at the time the Form FmHA 1962-1 is prepared.

41. Question: FmHA Instruction 1962-A, section 1962.41(b)(3) states that the borrower will sign Form FmHA 455-3 when a borrower is having a private sale. Why is it needed?

Answer: Form FmHA 455-3 is used by the County Supervisor to authorize borrowers to liquidate security. The form provides for a clearer understanding between the borrower, and FmHA relative to the sale. It also declares the account immediately due and payable if the sale proceeds do not pay the account in full, so that debt settlement actions could later be taken.

42. Question: Who is authorized to sign, revise and make releases on Form FmHA 1962-1?

Answer: County Supervisor or Assistant County Supervisor with appropriate delegation.

43. Question: On Form FmHA 1962-1, how specific do we need to be on recording the planned use of proceeds?

Answer: You need to be specific so that all parties know what the proceeds are to be used for and to satisfy any legal issue that may arise on the use of funds. The Forms Manual Insert for FmHA Form 1962-1, Instructions for Preparation, item (5) states, "The entry must be specific."

44. Question: The borrower has converted security but is not delinquent. What does FmHA do now?

Answer: The County Supervisor should send a letter similar to Guide

Letter 1962-A-5 to the borrower. Then follow the steps outlined in FmHA Instruction 1962-A, section 1962.18.

45. Question: In regard to FmHA Instruction 1962-A, section 1962.40 b(3) what does it mean by, "The County Supervisor may give the borrower 60 days to accomplish such action."?

Answer: Prior to sending Forms FmHA 1924-14, 1924-25, and 1924-26, a borrower may be given 60 days to voluntarily accomplish the listed actions. The time limit will not be extended.

46. Question: FmHA Instruction 1962-A, section 1962.17 - Use of proceeds - no where does it say funds coming to FmHA can be used to pay other creditors before FmHA? What about payment to Federal Land Bank, Production Credit Association, John Deere Tractor Co., etc.?

Answer: FmHA Instruction 1962-A, section 1962.17(b)(2)(iv) provides for the release of proceeds necessary for the continued operation of the farm. If the payment to other creditors is necessary for the continued operation of the farm, proceeds from FmHA security may be planned and used to pay such other creditors.

47. Question: On Form FmHA 1940-17 is the "Addendum For Deferred Interest" used only on deferrals?

Answer: Yes.

48. Question: When Form FmHA 1924-25 is sent to the borrower whose name appeared on the December 31, 1985 delinquency report do we show the total amount delinquent on December 31, 1985, plus the January 1, 1986 payment due? Example: Amount shown on the December 31, 1985 delinquency list is $5,000. Installment that was due on January 1, 1986, was $10,000. What amount is shown?

Answer: $15,000.

49. Question: In the same situations as in question 48, but FmHA knows the borrower has paid the $5,000 payment that was on the December 31, 1985 delinquency list but not the January 1, 1986 installment. What amount is shown?

Answer: $15,000. We suggest you attach a letter similar to Exhibit A of these questions.

50. Question: A borrower makes a second unauthorized disposition of security during the planned year; however, he comes in and makes restitution in both cases. Do we send the borrower Forms FmHA 1924-14, 1924-25, and 1924-26?

Answer: Yes. FmHA Instruction 1962-A, section 1962.18(a)(2)(i) states that after the second unauthorized disposition of security the County Supervisor must proceed in accordance with section 1962.49.

EXHIBIT A

## GUIDE LETTER

To Be Used When Form FmHA 1924-25 Is
Sent to a Borrower for Monetary Default
When the County Supervisor Has Reason
To Believe the Payment Has Been Made

Dear (borrower) :

Farmers Home Administration regulations require us to send the enclosed "Notice of Intent to Take Adverse Action" and attachments to each borrower that is $100 or more behind schedule according to FmHA records. If you are not delinquent, please contact the office at the address on the letterhead or by phone. The phone number is ____________.

Sincerely,

County Supervisor

Enclosure

Question: In making a determination regarding new loan-making, will you consider a borrower's ability to repay prior loans?

Answer: Yes. As part of a complete evaluation and projection of the borrowers current financial condition.

Question: Do you intend for county offices to give response to those letters priority over normal FmHA loan-making activities?

Answer: We do not intend to establish any priority system. Most of the existing FmHA borrowers who receive the notices will need to be considered for a loan in conjunction with other servicing actions.

First time applicants will be handled along with existing borrower applications in order of date we have received a completed application.

Question: The letters instruct farmers to choose a financing, or debt-servicing option from a list of options attached to the letters. Is a farmer obligated to stick to that choice, or will county office personnel explore all of the options with the borrower?

Answer: The farmer can change his choice of options at any time he desires. County offices can discuss all the options with the borrower but the borrower will make the final decision.

Question: Information printed in the November 1, 1985, Federal Register seems to indicate that borrowers declared delinquent prior to October 24, 1984, are not eligible for deferrals. Is that accurate?

Answer: FmHA instructions do not prohibit giving deferrals to most borrowers who were delinquent prior to October 20, 1984. However, some borrowers were sent both the "Pretermination" package and an acceleration notice before October 20, 1984, and they are not eligible for deferrals.

## FmHA PERSONNEL

Question: With the sequestration of funds under Gramm-Rudman-Hollings will come a cut back in the Salaries and Expenses account of FmHA (approximately $15 million). Will you have enough personnel to handle the massive paperwork which will be required by your proposed actions, not to mention the regular FmHA activities?

Answer: While the Gramm-Rudman-Hollings reduction in administrative expenses total $19,175,000 of our direct appropriation for fiscal year 1986, we believe we will have sufficient staff resources available to handle the farmer program servicing actions and other loan making needs. To meet the anticipated demand for funds for this Spring planting season as well as provide loan servicing to our present borrowers, we expect to release, shortly, an additional 200 staff years from our authorized ceiling and an additional $3,000,000 in overtime. The release of these resources, however, will require the Agency to curtail other activities, but no operation should be harmed seriously.

Question: To what extent will you be utilizing temporary personnel or personnel from other agencies (i.e., Soil Conservation Service)? What kind of services will they provide? What kind of training will they have?

Answer: The proposed distribution of 200 staff years to our field will be restricted to temporary personnel. This will allow the Agency to staff up quickly to meet peak demands. It would be expected that the temporary personnel would be off the payroll by the end of the fiscal year. Overtime would also provide a needed resource to our current permanent field staff to handle the increases in workload during the early spring.

We encourage our field offices to contact other Federal agencies in order that they may make every effort to secure gratuitous help where appropriate. Every avenue will be explored in order that we may effectively deliver our program in rural America.

Question: Will the support from other agencies be paid by those agencies or by FmHA?

Answer: Since our resources will be stretched to the limit, we would first explore the options of seeking gratuitous services by other agencies. Should this process not materialize, we could then enter into agreements with other agencies to provide assistance. These agreements would have to be paid from FmHA's administrative funds.

## EFFECT ON APPROPRIATIONS

As of January 22 of last year, approximately $300 million had been obligated under the farm ownersip loan program, and $535 million in operating loans had been obligated. As of the same date this year, only $130 million in farm ownership loans has been obligated, and about $470 million in farm operating loans has been obligated.

Question: Do you know the reason fewer funds are being obligated this year?

Answer: The demand for direct loan funds has declined due to our increased emphasis in the use of guaranteed loan funds in the Farm Ownership and Operating loan programs. However, the rate of obligation for operating loan funds is approximately the same as last year when the amounts for direct and guaranteed loan types are combined.

Question: Is it because county offices are waiting for some direction from Washington on these new regulations?

Answer: County offices are not waiting for any additional direction from Washington.

Question: Will implementation of these new regulations cause a reduction in the amount of loan obligations for this year?

Answer: Implementation of the new regulations may cause a slight reduction in the amount of loan obligations to delinquent borrowers compared to last year. We will not provide credit to borrowers unless the projected cash flow is adequate to operate the farm, provide adequate family living expenses and service all debt. However, total obligations, which includes FmHA borrowers who are not delinquent and first time borrowers, is difficult to project.

## LOAN LEVELS

I understand that a decision has been made to follow the loan levels for Farmers Home as they appeared in the farm bill, rather than the appropriations bill. A total of $4 billion is to be available for ag credit as compared to $5.1 billion, which is slightly less than the amount needed in 1985.

Question: Was that a policy decision, or a legal decision?

Answer: A legal decision, due to the timing of signing into law for the Continuing Resolution, P.L. 99-190, December 19,1985, and the Food Security Act of 1985, P.L. 99-198, December 23, 1985.

Question: Does it appear that the levels in the farm bill will be sufficient?

Answer: At present, FmHA has substantial unobligated balances for the operating and farm ownership loan programs to assist applicants. FmHA is subordinating and participating with local lenders and suppliers to stretch loan funds. We are continually monitoring obligations closely and will make adjustments where ever possible.

Question: What will you do when you run out of money?

Answer: We will use all available loan authorities to satisfy the loan demand of the FmHA Farmer programs.

## INVENTORY

Question: The General Accounting Office estimates that in 1981 you had about 250 farm properties in inventory. By 1985, that number had increased to approximately 4,000. They further estimate that the servicing actions you are proposing would increase that number to near 20,000 properties. Are those numbers accurate?

Answer: Based on statistical information obtained from FmHA State Offices regarding the number of farms in inventory in 1981, and the recent report prepared by FmHA's Financial and Productivity Analysis Division on farms in inventory as of October 31, 1985, the numbers regarding farm properties presently in inventory are accurate.

The estimate of 20,000 properties is a worst case projection and based on the assumption that we could not find any solution to the financial difficulty of 16,000 of our 65,000 delinquent accounts and that the property held by these 16,000 borrowers would be conveyed to FmHA .

We would expect a good portion of any real estate property to move by transfer and assumption thereby keeping it out of inventory.

Lenders servicing action on delinquent accounts always results in some property coming into inventory. FmHA's increasing inventory is largely the result of our decision to hold this property off the market until farm real estate values stabilize. We will not put any unecessary pressure on the market.

Question: How many properties do you anticipate that you will acquire this year, either through foreclosure or through voluntary conveyance?

Answer: At this time it would be impossible to determine the number of farms we might acquire by foreclosure or voluntary conveyance. We will have to analyze the financial strength of 65,000 delinquent accounts before we can make any realistic projection of properties that might change hands.

Question: What are your plans for these properties? Do you plan to retire marginal land in your inventory?

Answer: On December 18, 1984, the Secretary placed a moratorium on the sale of farm inventory property in nine States. Iowa, Minnesota, Missouri, Kansas, Illinois, Nebraska, North Dakota, South Dakota, and Wisconsin were restricted until further notice by the Secretary. The FmHA will continue to lease these properties with priority given to family-sized farm borrowers.

For those States where the moratorium was imposed by the Secretary, the request to sell inventory farms must be submitted to the FmHA Administrator, along with documentation that the sale of these farms will not have an adverse effect on farm values in the State.

We are considering the issue of retiring marginal land either through conservation reserves in the case of highly erodible land or the outright transfer of wetlands to the Fish and Wild Life Service. These options are in the discussion stage only.

## MISCELLANEOUS

Question: What effect do you think the actions required by the new regulations will have on rural economies?

Answer: The actions required by the new regulations will have a very small impact on rural economies. Our 65,000 delinquent borrowers represents only 3 percent of the farmers in the United States. We expect to develop acceptable workout plans for part of the delinquent accounts thereby reducing the impact to less than 3 percent.

Question: Do you have any plans to ask private financial institutions to adjust farmers' debts, as you did last year?

Answer: Yes. In addition, FmHA will implement the Guaranteed Loan Interest Rate Reduction program as provided in the Food Security Act of 1985. The lender will be asked to reduce the borrowers interest rate. For each point of reduction by the lender, FmHA will match the reduction, up to 2 percent, for a potential benefit of 4 percent interest reduction to the farmer. FmHA will make the interest subsidy payment to the lender.

In addition, we will continue our long standing practice of asking private financial institutions to adjust farmers debts.

Question: Do you plan to coordinate your servicing actions with private lenders?

Answer: Yes. FmHA is placing considerable emphasis on the Guaranteed Loan program and working closely with other lenders.

Training sessions are being held with other lenders to insure that they are current on our latest policies concerning the making and servicing of guaranteed loans.

Question: This whole effort is geared toward borrowers who were delinquent as of December 31, 1985. What, if anything, will happen to borrowers who become delinquent after that time?

Answer: Borrowers who are on any subsequent December 31 delinquency list will be notified of their servicing options.

In the meantime FmHA will be counseling with the borrower to ensure that he/she is aware of their obligations so that they might correct the delinquency before the next delinquency report.

Question: According to the letter which was circulated earlier this month, if the farmer does not choose any of the options available to him, the account will be "accelerated." What exactly does that mean? Is this another way of saying, "We're going to foreclose."

Answer: Prior to acceleration of an account, all servicing options will have been offered to the borrower to continue farming. Acceleration means the loan is immediately due, and payable within 30 days. However, the borrower may voluntarily liquidate the security prior to the date of foreclosure sale with FmHA's concurrence.

Question: What is the timeframe you would use in accelerating those loans?

Answer: Accounts that must be accelerated will be handled as fast as possible taking into consideration that ability of FmHA and the Office of General Counsel, and the Department of Justice to handle these accounts.

Question: Do you have a breakout of which types of loans are delinquent? For example, how many emergency loans, how many operating loans, etc.

Answer: Yes. The information is available by types of loans at the National, State, District and County Office levels. The United States General Accounting Office's report "An Overview of Farmer Program Debt, Delinquencies, and Loan Losses" Number

GAO/RCED-86-57BR also provides a breakout of which types of loans are delinquent.

Question: If a borrower is delinquent on only one loan, do you intend to "accelerate" payment on other loans as well?

Answer: Only if an acceptable workout plan cannot be developed.

## QUESTIONS SUBMITTED BY SENATOR ANDREWS

Question: Section 1315 of the credit title of the 1985 Farm Bill provides that FmHA must release sufficient income for living and operating expenses until such time as the loan is accelerated. In the regulations that you will release next month, is it your intention to deny living expenses to farmers who restructure their loans?

Answer: No, we would not deny living expenses.

Question: One of the conditions for deferral eligibility is that borrowers must be current in their real estate and insurance payments. The irony is, of course, that such payments are frequently overdue because FmHA has delayed releasing farm income so that borrowers can make those payments. Is FmHA going to make allowances for such cases?

Answer: One of the conditions for deferral is that the borrower, before experiencing financial difficulty, had paid when due, all real estate taxes and property insurance premiums. The taxes and insurance do not necessarily have to be paid current at the time the borrower requests a deferral. We do not intend to grant deferrals to borrowers who neglected to pay their taxes and maintain insurance even though they had the money to do so.

Question: My understanding is that borrowers will have to be able to show that they have operated their farms using "recognized successful production and financial management practices." I like the sound of that phrase. I don't have the slightest idea what it means or how you expect to apply it, but it does sound nice. You know, my county agent is a pretty sharp guy, but I'm darn sure he'd have planted barley on some quarter section where I planted sunflowers in any given year. And I reckon just like me, he'd recognize "successful production practices" a lot easier come harvest time than in the spring. I could drive a John Deere combine through a loophole this big. Just how do you expect to objectively apply a standard like this?

Answer: The County Supervisor with the aid of the FmHA State Office staff, Extension Service and Soil Convervation Service, prepares key management practices for all crops normally grown in each county. The County Supervisor and the borrower agree on the key management practices needed for the crops the borrower plans to grow. These are listed on and become part of the borrower's farm and home plan. This does not relate to the type of crops grown but to the practices necessary to achieve the production potential of crops and enterprises agreed upon at the time FmHA agreed to provide credit.

Question: One of your new regulations calls for chattel and real estate loans to be accelerated at the same time if either loan is in default. If a farmer has a good operating loan that is supporting a viable farming operation, but he's unable to meet payments on his real estate loan, what sense does it make to accelerate both loans?

Answer: Regulations do permit FmHA borrower to continue with those loans that are not jeopardized by the liquidation of other loans. For example, it is possible that a borrower could continue with a chattel and/or housing loan if repayment of these loans could be established.

Question: With a policy like that you're going to jeopardize the farmer's ability to operate at all.

Answer: To reiterate the previous answer, regulations do permit FmHA to continue with those loans that are not jeopardized by the liquidation of other loans.

Question: The volume of loans that will need servicing as a result of the new regulations could potentially overwhelm FmHA's personnel. Even last year you needed assistance from volunteers and other local USDA offices to handle all the borrowers. The influx of borrowers who will be turned away from PCA's, Federal Land Banks and commercial banks will make matters even worse. Have you made arrangements to meet these needs?

Answer: Contracting authorities, temporary employees, overtime and detailing personnel where needed will be used to cover any increase in workload due to an increased demand for FmHA Services.

Question: Are you prepared to use overtime and transfer personnel to cover the surge in workload?

Answer: Yes, we will use these authorities to cover increased workload.

Question: For the last 4 years, FmHA has followed a policy of disregarding a borrower's ability to repay prior loans when they applied for additional financing. You have now dropped this policy. Exactly how do you expect this to affect your lending actions?

Answer: FmHA will be able to return to more prudent lending practices, which is in the best interest of both FmHA and farmers. Making sound loans with adequate security and cash flow for repayment is the best way FmHA can carry out the objectives of its farm loan programs, i.e., to enable eligible applicants to become successful farm operators/or owner operators. Creating or perpetuating operations with virtually no likelyhood of success is a poor use of the borrower/applicant's time and effort, and results in excessive costs to the taxpayers.

Question: How many borrowers who are cashflowing for current operations will be denied loans because of this change in policy?

Answer: At this time we are uncertain as to how many borrowers will be denied loans as a result of the policy change. We expect some borrowers will be able to qualify for servicing actions including deferrals which will restructure their payments and enable them to show repayment on all loans. Other borrowers will be able to sell assets and reduce debt, or obtain debt adjustments from other creditors which would facilitate a positive cash flow. Because these actions will occur on a case by case basis depending upon each borrower's unique situation, FmHA has no way of knowing exactly how many borrowers will be affected.

Question: Mr. Naylor, are you familiar with the FmHA pilot programs to utilize the private sector as a means of improving USDA's debt collection and servicing efforts on nonfarm, rural housing loans?

Answer: FmHA's pilot programs are to utilize the private sector to aid in debt collection on FmHA nonfarm rural housing loans. FmHA awarded a contract in Puerto Rico in October 1983 for the servicing and collection of approximately 26,000 nonfarm rural housing loans. FmHA initiated this pilot project to test the feasibility of using a private sector contractor to aid in debt collection. This was FmHA's first attempt at such an effort and evaluation of this pilot project has revealed that many changes were needed to strengthen the pilot program. Other pilots were attempted in South Carolina and Pennsylvania but these pilots were unsuccessful.

Question: Mr. Naylor, this committee is aware that FmHA has been unable to collect its delinquent debt on these loans and yet various pilot programs for private debt collection have been cancelled after capable private bidders responded to FmHA proposals. A South Carolina private debt collection pilot program was cancelled in January of this year, a Pennsylvania pilot program for counseling and servicing FmHA loans was cancelled in January 1986. An Indiana pilot program for collection and servicing 5,500 delinquent accounts was cancelled without explanation in 1982. Does this mean that you disagree with the concept of utilizing the private sector to assist your Agency to better service and collect outstanding delinquent loans?

Answer: It must be recognized that this concept is new and the feasibility of this concept is being thoroughly tested and evaluated before extensive outlays of funds and personnel resources are made to expand to other areas.

Question: Mr. Naylor, are you satisfied with the fact that FmHA alone is responsible for over one third, $6 billion, of the Federal Government delinquent debt?

Answer: FmHA is striving to reduce the delinquency in FmHA debts. We believe the recently published servicing regulations, which provide more opportunity to restructure borrower's debts, will assist FmHA in reducing the outstanding delinquency. FmHA's position as a lender of last resort and the present state of the farm economy has contributed to the high delinquency of FmHA's Farmer Program loans, but FmHA continues to work on reducing the delinquency while assisting our borrowers.

Question: Mr. Naylor, do you currently have the needed resources to collect this FmHA loan debt?

Answer: By using all of our available resources such as contracting, overtime authorities, and, etc., along with our new automation plan, we feel we can do a reasonable job of meeting the challenge.

Question: Mr. Naylor, then you must agree with me that private debt collection is the best means of improving this situation. Why, then, have you allowed FmHA to pursue an inconsistent policy of requesting proposals at great expense to the private sector, but never taking the affirmative steps to improve its debt collection efficiency by means of private debt collection?

Answer: The use of private debt collection agencies is not a viable method of collecting FmHA's Farmer Program debts at this time. FmHA regulations provide servicing options and a very detailed process that must be followed when servicing delinquent accounts.

Question: Mr. Naylor, I would like an explanation as to why these private debt collection pilot projects have been stopped. And also, what are your plans to immediately reinstate the South Carolina and Pennsylvania projects if you agree with this Committee that private debt collection is the best and only means of recapturing the billions of dollars FmHA is owed.

Answer: The cost of the Pennsylvania contract exceeded budgetary projections and the cost effectiveness of the contract was questionable considering the services to be obtained and number of borrowers to be served. FmHA contracting priorities are more appropriately placed on the pilot project in Puerto Rico and development of a pilot project, as mandated by Congress, for servicing, collecting, and escrowing of taxes and insurance. Therefore, we do not plan to reinstate the South Carolina and Pennsylvania projects.

## QUESTIONS SUBMITTED BY SENATOR MATTINGLY

Question: Mr. Clark, I can appreciate the problems you face in trying to manage your Agency. Trying to process this year's requests in a timely fashion, and also trying to service the outstanding loans from former years — some of which are in serious default. What plans do you have to provide adequate numbers of trained personnel to meet the crush of business which is about to descend on FmHA?

Answer: We plan to distribute additional temporary employment to those areas with the highest farm workload activities. We will also use contract authority, overtime and detail of experienced personnel where needed in order to meet this surge of business.

Question: I have received what I think is the latest information regarding your plans for dealing with delinquent loan accounts. Am I correct in my understanding that FmHA will be sending "Notice of Intent to take Adverse Action" to only those borrowers who have failed to make any payment whatsoever during the 3-year period prior to December 31, 1985?

Answer: Form FmHA 1924-25, "Notice of Intent To Take Adverse Action" will be sent to any borrower who has not made a payment on one or more accounts in the last 3 years, since December 31, 1982. Also, borrowers who have made unauthorized disposition of security property or have otherwise intentionally failed to live up to the covenants of their agreements with FmHA will receive form FmHA 1924-25, "Notice of Intent to Take Adverse Action."

Question: Does that mean any payments -- even if the payments have not been enough to pay the interest current?

Answer: Form FmHA 1924-25, "Notice of Intent to Take Adverse Action" will be sent to any borrower who has not made any payment on one or more accounts in the last 3 years, since December 31, 1982.

Question: Most of the complaints I receive about farm program loans seem to be because what Farmers Home tells us the program will be just doesn't seem to get transmitted down to the county level in the same form. I don't know if that's because the broad, general statements made in hearings like this one get distorted when they are translated into regulatory language, or if the County Supervisors just can't understand the regs to mean what we say they mean. What are you planning to do to ensure that these loan servicing options are truly utilized to the fullest extent possible at the county level?

Answer: The National Office provided training to the State Directors, Farm Program Chiefs, Farmer Program Loan Specialists, District Directors and Program Review Assistants in October and November 1985. Each State then had meetings in each district for all county office personnel. FmHA field offices are continuously being informed by FmHA instructions, administrative notices and memorandums on how to provide guidance to borrowers.

It must be recognized that credit decisions are judgmental and rules cannot be developed to give absolute uniformity and precision to that decision making process. Occasionally, interpretations are given to regulations that are not consistent with National Office policy. We need to know about specific cases where that occurs so we can rectify the situation.

Question: As you know, the Homestead amendment which I authored was included in the new farm bill. When do you expect to have the regulations pertaining to this program ready for publication in the federal register?

Answer: FmHA is in the process of drafting the regulations to implement this program. We anticipate the regulations to be ready for publication as final rules by May 1, 1986. We will have to publish these rules for public comment. We expect to publish for a 30-day comment period about March 1. It normally takes from 45 to 60 days to publish a final rule.

Question: In addition to the homestead protection provisions of the new farm bill, there is a section which allows the Secretary to administer a program devoting up to 50,000 acres of land owned by delinquent FmHA borrowers to the planting of softwood timber stands. Do you intend to implement this provision, and if so, how many troubled borrowers do you feel this program will help?

Answer: The Department is carefully studying this program and all the ramifications of its implementation.

## QUESTIONS SUBMITTED BY SENATOR SPECTER

Question: Currently, 16 percent -- 485 out of 3,108 -- of Pennsylvania's Farmer's Home borrowers are technically delinquent in their FmHA payments. Are any of these farmers in danger of foreclosure?

Answer: Only those farmers that have made unauthorized disposition of security, have not paid anything on a loan for the last 3 years, ceased to farm, or whose accounts were in the process of acceleration at the time of the court injunction are facing adverse action, including foreclosure, at this time.

Question: How soon will you begin this foreclosure process?

Answer: The foreclosure process will begin only after we cannot develop a feasible workout plan for delinquent accounts. For those borrowers who have made unauthorized disposition of security property or whose accounts were being accelerated at the time of the court imposed injunction, the foreclosure process will begin immediately.

Question: With the lapse of the 2-year court ordered moratorium on FmHA foreclosures, what will be your future attitude on foreclosures?

Answer: Our attitude is, as it has always been, that foreclosure is used only as a last resort.

Question: Do you now have clear, written criteria for determining whether a delinquent farmer is eligible for loan deferral or reamoritization of loan obligations?

Answer: Each case has its own unique characteristics and possibilities. Eligibility is determined from an in depth analysis and planning with each individual borrower. Credit decisions are judgmental and rules cannot be developed to give absolute uniformity and precision to that decision making process.

Question: Have these criteria been transmitted to your field offices so they can explain this policy to farmers?

Answer: Training sessions have been held by State and district offices to insure that county office staffs understand the regulations. Knowledge of the borrower and observation of the farming operation are an integral part of credit decisions. Regulations establish what we can do. Analysis and evaluation of the farming operation will determine what we will do.

Question: I think it is extremely important that small farmers have the same access to capital as large farmers and small businesses. What action can be taken to ensure that small farmers have such access?

Answer: Completed applications are processed in the date order received. This assures the same access to capital.

Question: Secretary Naylor, I want to thank you for your prompt assistance in dealing with the critical long-term credit problems of a number of Pennsylvania farmers. As a result of your timely help, a number of Pennsylvania farmers were able to secure farm ownership loans. What actions can be taken over the long-term to ensure that inaction on credit applications do not recur in the future?

Answer: Applications will be approved or disapproved not later than 60 days after receipt of a completed application. If the application is incomplete, the applicant will be notified of the reasons within 20 days after its receipt. Loan proceeds will be provided to the applicant within 15 days after loan approval unless the applicant agrees to a longer period.

## QUESTIONS SUBMITTED BY SENATOR BURDICK

Question: FmHA has a self-imposed ban on the sale of foreclosed or abandoned farms owned by FmHA since August 1984, because sale of existing inventory will have a downward effect on local land prices. The new farm bill has a provision prohibiting sales if the sale would depress local farmland values. If even one-third of the 1,800 farms in North Dakota were added to FmHA's inventory, this would be 600 farms. What would be the purpose of FmHA accumulating this land if it can't sell it?

Answer: We do not want to accumulate farms in our inventory. However, we do not intend to continue with farming operations that have no chance of working out of their financial difficulty. The cost of non-performing loans is the same whether or not the property is in inventory. The only way we can stop that cost to the Government is to effect a transfer of ownership.

We try wherever possible to make that transfer without taking the property into inventory. However, there are cases where we have to acquire the property in order to get it into new hands in a timely manner.

FmHA will continue to monitor its farm properties in inventory to determine if the sale of these properties will adversely affect land values. Until that determination is made, FmHA will continue to use its lease authority as a management tool for its properties in inventory.

Question: Do you intend to lift the ban on selling FmHA property?

Answer: We do not intend to lift the ban at the present time.

The Secretary of Agriculture will determine, if and when the moratorium on the sale of inventory property will be lifted.

Question: Clearly, this practice would further decrease farm land values, don't you agree?

Answer: We agree. We will place properties on the market only after the market has stabilized. The recently enacted Farm Bill requires that we continually study the market and that we refrain from any marketing activity if it would adversely affect values.

Question: Therefore, what is the purpose of this exercise?

Answer: If and when the moratorium is lifted, the FmHA would not place all of its farm inventory properties on the market at one time. The FmHA would continue to monitor farm real estate sales to determine the affect they were having on land values.

Question: How much land is FmHA holding nationally and in North Dakota?

Answer: As of October 31, 1985, FmHA had 3,969 farms in inventory for a total of 1,064,586 acres. For the same time period, North Dakota had 74 farms in inventory for a total of 41,684 acres.

Question: Federal district court in Bismarck, North Dakota, is currently considering the legality of the notices and the new regulations. The hearing started just 2 days ago. The plaintiffs are farmers, and there is every reason to believe that their claims have considerable merit since they were joined by seven States — North Dakota, Minnesota, Texas, Iowa, Illinois, Kansas and Oklahoma. What would be the purpose of FmHA forging ahead with this foreclosure policy if the court rules that it is illegal?

Answer: In order to comply with the earlier court decision, FmHA has issued new servicing regulations that it believes will comply with the court decision.

These are the current servicing regulations which FmHA offices are required to use in servicing of all farmer program type loans. To delay this action would deprive farmers of the various FmHA servicing options which include; rescheduling, reamortization, consolidation, deferrals, use of sale proceeds and other servicing actions.

Question: FmHA has taken over a year and a half to write the regulations, why can't you wait another month or however long it takes to resolve the legal issues?

Answer: We are issuing the new regulations in compliance with a court mandated deadline.

Question: Have you any idea the anguish, confusion, and fear that these notices could cause in rural America?

Answer: FmHA is fully aware of the status of the American farm economy and FmHA intends to work with all its borrowers to the fullest extent possible to work out a resolution to their problems.

Question: Assuming FmHA takes over a farmer's land because he cannot pay, you either have to sit on that land or sell it or lease it to another party. You certainly cannot expect to get the same price that the original farmer paid. At the hearing I held in Bismarck, I asked the witnesses how much their land values had declined. Do you know what they told me? First of all, those are trying to sell land can't get bids. And you suggest that one of the options to become current is to dispose of some of their assets. And if they can find a buyer, the value has dropped up to 50 and 60 percent over the last 3 years. If FmHA is going to take land away from farmers and sell it at a 50 percent loss, why can't it write off that loss for the current owner?

Answer: Before FmHA acquires any land from its current owner, all servicing options that may assist that owner to have a successful operation are explored. The owner is encouraged to sell the land before FmHA acquires it. It is only after all servicing alternatives, such as deferral and reamortization, are considered and it is determined that the current owner cannot become a success with FmHA assistance, then FmHA will acquire the land from that owner.

Our current regulations do not permit write offs. We believe such a practice would be totally unacceptable to 97 percent of the Nation's farmers who will not receive such favorable treatment.

Question: What sense does it make to take the land away and ruin the farmer if FmHA is going to take the loss anyway?

Answer: The Food Security Act of 1985, provides that FmHA will give special consideration to leasing real estate to previous owners. This will provide an additional opportunity to assist the farmer in those cases where it is an advantage to lease the real estate rather than be an owner-operator.

In our opinion, it is totally unacceptable to write off a debt. Bankrupty laws are designed for that purpose. We believe the large majority of a Nation's farmers who are able to keep afloat would find such a write-off to be a blatant disregard of a basic premise that the right to try carries with it the risk of failure.

Question: Mr. Clark, you indicate in your testimony that "the Agency made every effort to comply with the court's mandate to assure due process for every FmHA borrower." No where in the forms being sent to the farmer are the criteria listed to be eligible for the various alternatives to foreclosure. I realize that they are listed in the regulations; however, the court already said that the farmers have a right to be told. Quoting from the court decision: "We cannot expect the ordinary farmer to spend his extra hours in a Federal depository, probably at least 100 miles away from his farm, reading the United States Code and the Federal Register." Do you choose to ignore this part of the court's decision?

Answer: With regard to the eligibility criteria, each case has its own unique characteristics and possibilities. Eligibility is determined from in depth analyses and planning with each individual borrower.

Question: How do you propose to let the farmer know the criteria?

Answer: The FmHA loan officer working with the borrower, will determine the criteria for each specific case.

Question: I would like to know exactly what you mean by the term delinquent. Do you make a distinction between a farmer who has not made any payments for the last 3 years verses a farmer who has been, for example, $100 behind for the last 3 years?

Answer: Any borrower who is $10 behind schedule for 15 days is considered delinquent. In order to provide reasonableness and consistancy to the servicing of delinquent farm accounts, it was determined that we would not contact delinquent farm borrowers until they had been delinquent at least $100 for a year. Because of our inability to service delinquent accounts for the past 25 months, we have established an administrative procedure whereby we can place emphasis on the accumulated backlog of our most seriously delinquent accounts. This procedure provides for sending Notice of Intent to Take Adverse Action to borrowers who have made unauthorized disposition of security property and to borrowers who have not made any payments on one or more of their loans for the last 3 years. For borrowers who are delinquent and may have been delinquent for many years, but who have continued to make some payment, we are simply advising them of the status of their account and asking them to make an appointment to discuss their situation with us.

## QUESTIONS SUBMITTED BY SENATOR BUMPERS

Question: I wrote a letter to Secretary Block on January 10 to express my very deep concern over the implementation of the new FmHA loan servicing procedures on such short notice. Since then it has been reported that you plan to wait approximately 2 weeks and not send the notices of "Intent to Take Adverse Action" until February 10. In my letter, I expressed my strong feeling that deferring the implementation of the new regulations at least 1 year would be very much in order. Why not have a delay of 1 year in which you offer borrowers all available servicing options and maintain the Agency's past policy of "policy borrowing" so that delinquent borrowers could have a greater opportunity to get their finances in order without the threat of imminent foreclosure?

Answer: The Administrator issued an Administrative Notice on February 3, 1986, which provides that only borrowers who have at least one loan on which no payment has been made for the past 3 years will be sent the "Notice of Intent to Take Adverse Action." Other delinquent borrowers will not be sent the Notice this year.

Question: Without the delay I have proposed, how do you believe FmHA personnel can possibly have the time to be adequately trained to implement this procedure, handle the necessary paperwork and fully inform and assist their borrowers?

Answer: In October and November 1985, the FmHA National Office provided week long training sessions for State and District Office personnel. The State officials then provided training to county office personnel. Training tapes and modules have been provided to all State, District, and County Offices.

Question: Isn't it true that you are currently reducing FmHA personnel in States throughout the south where a great many borrowers are located? Ten positions are being eliminated in Arkansas, for instance, which will result in the closing of one district office and very possibly, some county offices. With such staff reductions taking place at a time when there aren't enough FmHA employees to handle all the cases that require their assistance, how can the remaining employees possibly carry out this new program and still adequately handle their regular duties?

Answer: Staff years were allocated in fiscal years 1985 and 1986 using a basic workload formula that included both estimated loan-making and servicing workload. Many States, Arkansas included, had received in the past more state resources than could be supported bythe workload. Beginning in fiscal year 1985, we began a transition of moving our resources more in line with actual workload. In order to reduce severe impact in any one State, we limited the reductions for individual States to a maximum of 3 percent. With the 3 percent limitation, Arkansas had a reduction of 10 staff years; however, without the 3 percent limitation, Arkansas could have been allocated 29 less staff years.

We believe these modest adjustments will not require any significant loss of employment since attrition can most likely handle the reductions. We will continue to provide the best service possible to our applicants and borrowers within the resources provided the Agency.

Question: Isn't it also true that with the rapid implementation of the new policy without adequate personnel, current borrowers may expect even greater delays in getting loans than they do now, thus pushing them into delinquent status?

Answer: Overtime, temporary personnel and contracting will be used as necessary.

Question: Will the new servicing options available in this program cover borrowers who have FmHA loan guarantees?

Answer: No. The new servicing options are not available to borrowers who have FmHA loan guarantees. Servicing of guaranteed loans is the responsibility of the private lenders, who make the loans.

Question: If a producer failed to repay totally a guaranteed loan, but was current with FmHA otherwise, would he be eligible to borrow from FmHA?

Answer: A farmer who has a guaranteed loan is not eligible for an insured loan of the same type whether or not the guaranteed loan is current. An insured loan may be made to refinance a guaranteed loan.

If a bank has received a loss payment from FmHA on a guaranteed loan, this past debt of the farmer's is taken into consideration, as would be any other past debt in, determining eligibility and repayment ability. It is not an automatic restriction to receiving an insured loan.

Question: It is my understanding that the FmHA will soon implement a policy that will allow borrowers who are suffering through foreclosures, voluntary conveyances or bankruptcy an opportunity to save their homes by offering to the FmHA the equity value in their homes. If the borrower doesn't have the up front money, the FmHA will finance the equity loan for a period of up to 25 years. This, as you know, is very similar to an amendment I introduced to S. 1714. What is the status of the new proposed FmHA regulation?

Answer: FmHA is preparing regulations that will allow borrowers to retain their homes by offering FmHA the equity value, upon voluntary conveyance of their farm. In addition, regulations will be implemented to allow farmers to lease the dwelling for a period of 3 to 5 years, with an option to purchase. Both of these regulations are being prepared now and are expected to be implemented by April 1, 1986.

## QUESTIONS SUBMITTED BY SENATOR BOREN

Question: Do you intend to conduct any analysis of the impact these foreclosures will have in each county prior to proceeding with foreclosure?

Answer: No, not on a county-by-county basis. We have looked at the impact on a National basis and believe the impact will be small in terms of adverse impact on rural communities. Obviously, some areas will be affected differently than others but for the most part, the impact will be minimal.

Question: Do you intend to proceed with foreclosures if the occurrence of the foreclosures will result in a 10 percent or greater drop in land values in any particular county or geographic area?

Answer: If FmHA takes the farm into inventory and it is determined the sale of the farm will have an adverse affect on the land values in the area, FmHA will not proceed with the sale of the property.

Question: Would you support prohibiting foreclosures if the decline would be that substantial?

Answer: Under our policy, foreclosures will not decrease land values. A prohibition on foreclosures would not be fair treatment of farmers who have maintained their honesty and integrity and those farmers who have violated the loan covenants.

Question: This is not exactly the same issue, Mr. Chairman, but I do believe it is pertinent to our discussion here today, as I fear that if the Department proceeds with a proposed regulation they will certainly place virtually every farmer in foreclosure position. The specific regulation of which I am speaking is the one which grants the Administration the authority to turn down loan applications if that producer is going to produce a crop that is in surplus. This is absolutely absurd. In essence, we are saying that if you produce wheat, cotton, rice, corn, soybeans, or milk -- you cannot get a loan from the Farmers Home Administration. You are going to place every one of those producers who also rely on FmHA for operating loans in a position of being unable to pay back any of their existing loans. The regulation states that this is consistent with the Administration's policy to reduce surpluses. I point out, that this Administration does not have that policy as far as I can tell. We have just enacted a farm bill that is certainly not aimed at reducing production — it's aimed at reducing costs. If the Department really wanted to reduce production in a serious manner, we could have passed a mandatory acreage control program. The Administration opposed that. Let's be realistic, the main reason acreage reduction programs were continued in the farm bill is to reduce the amount of money that must flow out. The larger the ARP, the less it costs.

In addition, if we had really wanted to reduce the production of crops that were in surplus, we would not have adopted a farm bill that requires a producer to produce a crop that is in surplus to gain any benefits from the commodity programs. Over my objections, we adopted a bill that tells farmers to continue producing surplus commodities if you want to stay in business. A farmer cannot get any deficiency payments or diversion payments unless he produces a surplus commodity on 50 percent of his permitted acreage. If we had adopted a policy to eliminate surpluses, we would have retained my amendment, which was included in the senate-passed farm bill, which gave the producer the flexibility to not produce a crop that is in surplus. I would like to hear from the Department on where they determined this "policy."

Answer: We certainly will not refuse credit simply because a farmer is producing surplus commodities. We will, however, refuse credit for bringing any additional acres or additional animals into production when those commodities are deemed to be in surplus.

Question: Would like to know how they believe farmers are going to be able to repay their loans if they are not permitted to plant crops for which there is some government income protection?

Answer: The focus of the regulation is not to penalize the farmer who has a base established but to restrict a farmer from bringing additional acres or additional animals into production when those commodities are deemed to be in surplus.

## CONCLUSION OF HEARING

Senator MATTINGLY. In conclusion, I would just like to say, Mr. Naylor, Mr. Clark, I think maybe if Congress had been in session for the last 30 days instead of in recess, we probably wouldn't have had this problem.

It sort of reminds me of the letters that James Roosevelt sends out with reference to Social Security and there are a lot of scare tactics in those. Now, whether it was irresponsible reporting or whether it was just a leak of information, I don't think you know, that's really the main point now. The main point is that we're back, and I don't think all of the options are all that complicated. I think Senator Specter sort of hit the nail right on the head when he made the comment that we need to set out whatever those options are very clearly and not in legal mumbo jumbo language. You really need to ask a farmer if he understands what you have written and try to put it in that type of language.

I think then I would really implore you to hold a press conference, the two of you, to tell the people exactly what the options are. I think you should do that, then lay them out in a very straightforward fashion, without the mumbo jumbo that the law profession can put upon you. I assume probably in the Agriculture Department, you probably have some lawyers. We have a proliferation of them here in the U.S. Senate. With that, I will just say thank you very much for coming before us today. The subcommittee will stand in recess subject to the call of the Chair.

[Whereupon, at 11:37 a.m., Friday. January 24, the hearing was concluded and the subcommittee was recessed to reconvene at the call of the Chair.]

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